

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JILL M BARRITT
Claimant

APPEAL NO. 06A-UI-09842-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN IDENTITY INC
Employer

**OC: 09/03/06 R: 01
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

American Identity, Inc. filed an appeal from a representative's decision dated September 25, 2006, reference 01, which held that no disqualification would be imposed regarding Jill Barritt's separation from employment. After due notice was issued, a hearing was held by telephone on October 23, 2006. Ms. Barritt participated personally. The employer participated by Helen Larsen, Plant Manager, and Roxanne Galles, Supervisor.

ISSUE:

At issue in this matter is whether Ms. Barritt was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Barritt was employed by American Identity, Inc. from February 5, 1992 until August 29, 2006. She was last employed full time as a garment inspector, a position she had held since 2003. On August 29, 2006, Ms. Barritt was given a written warning because some of the items she passed through inspection had to be redone. Approximately ten minutes after giving the warning, the supervisor approached Ms. Barritt at her workstation to make sure she understood what flaws had been detected. Ms. Barritt was still upset because of the warning and told the supervisor that she did not want to discuss the issue at that time. After she told the supervisor twice that she did not want to discuss the issue at that time, the supervisor suggested they go to the conference room to discuss it. Ms. Barritt then said "fuck this place, I'm leaving." Her language was not part of the reason for the discharge. As she was leaving, the supervisor advised that she should consider herself to be on a three-day suspension.

The decision was made on August 29 to discharge Ms. Barritt. She returned to the workplace later that day to apologize to the supervisor. Ms. Barritt had never been disciplined for inappropriate conduct at work. Her last warning regarding the quality of her work was on April 29, 2002.

REASONING AND CONCLUSIONS OF LAW:

Ms. Barritt was discharged from employment. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The decision to discharge Ms. Barritt was prompted by her conduct of August 29. She raised her voice to the supervisor and refused to go to the conference room to discuss why she was upset. She was upset because she had received a warning concerning the quality of her work and did not want to talk with the supervisor because she was still upset. Under the circumstances, the administrative law judge is inclined to view her actions as an isolated, "hot-headed" incident. Ms. Barritt did not have a history of such conduct during the 14 years she was in the employment. Isolated instances of poor judgment do not constitute acts of misconduct. See 871 IAC 24.32(1).

The employer also discharged Ms. Barritt because of the quality of her work. She had received warnings in the past concerning her performance. However, the last such warning was in 2002, over four years prior to the discharge. She had not received any warnings concerning the quality of work since becoming an inspector in 2003. Given the time lapse since Ms. Barritt's last warning concerning her job performance, the administrative law judge concludes that the quality of her work on August 29 did not represent an on-going problem.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that disqualifying misconduct has not been established. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated September 25, 2006, reference 01, is hereby affirmed. Ms. Barritt was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw