

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CONNIE S KLEIN
1900 WHITE ST
DUBUQUE IA 52001

ST VINCENT DE PAUL STORE
1351 IOWA ST
DUBUQUE IA 52001

Appeal Number: 05A-UI-12141-CT
OC: 09/04/05 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

St Vincent De Paul Store filed an appeal from a representative's decision dated November 23, 2005, reference 03, which held that no disqualification would be imposed regarding Connie Klein's separation from employment. After due notice was issued, a hearing was held by telephone on December 15, 2005. Ms. Klein participated personally. The employer participated by Tracy Geister, Payroll/Personnel Manager; Terry Thompson, Store Manager; and Robert Ridgeway, Warehouse Supervisor. Exhibits One and Two were admitted on the employer's behalf.

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. Klein was employed by St Vincent De Paul Store from September 23 until November 1, 2005. She was hired to work full time in the warehouse and as a cashier. She was discharged during the 90-day probationary period because of her attendance and her attitude.

Ms. Klein missed five days of work during the course of her employment. The absences were due to court appearances and personal appointments. The final absence was on November 1, when she notified her supervisor that she needed to leave early because of an appointment. Ms. Klein failed to punch in at the start of her shift on October 7 and failed to punch in and out for lunch on October 10. She was three minutes late on October 14. She had not been warned about her attendance either verbally or in writing.

Part of Ms. Klein's work in the warehouse was to sort donations. Items that could be sold in the employer's store were separated from those items that could not. She sometimes deleted items the employer felt could be sold or retained items the employer felt could not be sold. When these instances were pointed out to her, Ms. Klein would usually respond by saying "whatever." The employer felt this displayed an insubordinate attitude. On or about October 31, it was noted that Ms. Klein was parked in the front of the store, an area reserved for customers. She was directed to park in the back row. Ms. Klein believed she was told she could not park in front of the store window. On November 1, she parked in front of the building but away from the store window. Also on November 1, she advised her supervisor that she needed to leave early for an appointment. She was not told that she could not leave early. As a result of leaving early on November 1, 2005, Ms. Klein was discharged. She had not been advised that her continued employment was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Klein was separated from employment for any disqualifying reason. 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). One of the reasons for Ms. Klein's discharge was her attendance. She was absent from work on five occasions during a period of employment that lasted approximately six weeks. Although this is an excessive number of absences, Ms. Klein had not been warned that her attendance was jeopardizing her continued employment. Had she known, she may have made different choices regarding her absences, if possible. On those occasions when she left work early, it was within the employer's authority to deny her requests. Absences taken with the consent of the employer do not constitute acts of misconduct.

The other reason for Ms. Klein's discharge was what the employer considered an insubordinate attitude. Her response of "whatever" when there were attempts to coach her was not clearly insubordinate. Such a response did not evince a willful or wanton disregard of the employer's standards. The fact that Ms. Klein had to be repeatedly coached regarding her sorting does not establish misconduct. For the most part, she was being called on to make judgment decisions regarding whether items could be sold in the employer's store. The fact that her judgment did not always match that of the employer does not establish misconduct. In making the decision to discharge, the employer also considered the fact that Ms. Klein parked in the wrong place.

This was a good-faith error based on a misunderstanding as to what she was told on October 31.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that disqualifying misconduct has not been established. Although Ms. Klein may have been an unsatisfactory employee, the evidence failed to establish that she deliberately and intentionally acted in a manner she knew to be contrary to the employer's interests or standards. 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 reason stated herein, benefits are allowed.

DECISION:

The representative's decision dated November 23, 2005, reference 03, is hereby affirmed. Ms. Klein was discharged, but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjw