

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THEKRYAT A AL BAYATE
Claimant

APPEAL NO. 12A-UI-09769-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GOODWILL INDUSTRIES OF
CENTRAL IOWA**
Employer

**OC: 07/15/12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Thekryat A. Al Bayate filed a timely appeal from an unemployment insurance decision dated August 9, 2012, reference 01, that disqualified her for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on September 10, 2012 with Ms. Al Bayate participating. Human Resources Generalist Laura Rosenberger, Store Manager Darlene Johns and Retail Coordinator Karen Tomlinson participated for the employer, Goodwill Industries of Central Iowa. Magdy Salama served as interpreter. Employer Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Thekryat A. Al Bayate was employed as a store clerk by Goodwill Industries of Central Iowa from March 22, 2011 until she was discharged July 13, 2012. The final incident leading to discharge occurred on July 11, 2012. A new volunteer asked Ms. Al Bayate where certain items should be placed on the shelves. Ms. Al Bayate responded by asking if the volunteer could read. The volunteer reported the incident to Store Manager Darlene Johns. Ms. Johns explained to Ms. Al Bayate that the volunteer's feelings had been hurt. She asked Ms. Al Bayate to apologize. Ms. Al Bayate would not do so. In June 2012 Ms. Al Bayate had been suspended for three days for slapping a coworker on the shoulder so hard that it left a mark. The coworker had shown the mark to Ms. Johns, who had been present at the time of the incident. Ms. Al Bayate had also received a verbal warning in November 2011 for being late to a store meeting.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden of proof. See Iowa Code section 96.6-2. The employer has established that Ms. Al Bayate was given the opportunity to apologize for her words to the volunteer. Had Ms. Al Bayate chosen to do so, the final incident could be viewed as a poor choice of words by one for whom English is a second language. Misconduct occurred because Ms. Al Bayate would not apologize. In addition to the final incident, the evidence establishes that Ms. Al Bayate struck a coworker hard enough to leave a mark. Ms. Al Bayate's response that she and the coworker were always joking is less credible than the employer's evidence. These two incidents occurring in close succession are sufficient to establish misconduct, especially in light of the prior warning for tardiness. Benefits must be withheld.

DECISION:

The unemployment insurance decision dated August 9, 2012, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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