

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER L WYMER**  
Claimant

**APPEAL NO: 13A-UI-11273-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VENTURES/ARROWWOOD  
RESORT OKOBOJI**  
Employer

**OC: 09/08/13**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's September 26, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing with her attorney, John Haroldson. The former general manager, Alicia Ahrens, testified on the claimant's behalf. Lyda Neuhaus, the director of sales, Karey Winkel, the account manager, and Ralph Bobian, a general manager, appeared on the employer's behalf. During the hearing, Claimant Exhibits A and B were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in October 2012. The claimant was initially hired to work in the accounting department. In March 2013, she began working as a sales assistant under Neuhaus.

When Ahrens was still the general manager, Neuhaus complained about the claimant's failure to clock in and out on the time clock. Although Neuhaus was the claimant's supervisor, she did not give the claimant any written warnings. As of August 29, the claimant's job was not in jeopardy even though Neuhaus had some unresolved issues with the claimant.

After the employer ended Ahrens employment on August 28, employees had a lot of unanswered questions about Ahrens termination. Upper level management called a mandatory meeting on August 29. The claimant did not go to this mandatory meeting. The claimant is pregnant and had some complications on August 28. She did not go to the mandatory August 29 meeting because she did not want the stress of the situation to create anymore complications with her pregnancy. Upper level management met with the claimant on

August 30 and talked to her about changes at work and that Neuhaus would be giving her a job description.

Bobian, a general manager at another facility, was directed to go to the facility where the claimant and Neuhaus worked. He called a mandatory meeting on September 4, 2013, to go over a list of inappropriate and unacceptable behavior, and to explain the new chain of command. The claimant did not learn about this meeting until the morning of September 4. She had a doctor's appointment scheduled at the same time as the mandatory meeting. As the claimant was leaving work to go to her doctor's appointment, Neuhaus came to work. When Neuhaus saw the claimant and learned she was leaving for a doctor's appointment, she told the claimant that she was to attend the mandatory meeting. As the claimant went to her vehicle to go to her doctor's appointment, Neuhaus overheard the claimant say, "I don't need this fucking shit."

Neuhaus made a list of issues she had with the claimant and gave them to Bobian. One of the issues was the claimant's refusal to attend the August 29 mandatory meeting. Another issue was the claimant's September 4 comment when Neuhaus saw and talked to her that morning. Bobian decided to talk to the claimant later on September 4 about the problems Neuhaus had reported about the claimant.

While talking to the claimant about Neuhaus's concerns, Bobian understood the claimant said, "I don't need this shit." After she made this comment he discharged her for being disrespectful to him, Neuhaus and upper level management. The employer considered the claimant insubordinate on August 29 when she did not attend the mandatory meeting.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

After Ahrens was terminated, employees had many unanswered questions about what was going on at work. Even though the employer may not have known on August 29 why the claimant did not attend the mandatory meeting, she presented a reasonable explanation as to why she did not go to the August 29 meeting. When management talked to the claimant on August 30, the evidence does not indicate the claimant received a warning for being insubordinate the day before. Instead, management talked to the claimant about her job and changes that would occur at that facility.

Bobian's decision to call another mandatory meeting on September 4 was not unreasonable under the circumstances. Unfortunately, the claimant had a doctor's appointment at the same time. The exchange between the claimant and Neuhaus the morning of September 4 illustrated the tension and problems between the two women. If the claimant made the comment, "I don't need this fucking shit," this isolated comment does not rise to the level of work-connected misconduct. Based on Neuhaus's bias, it is doubtful that the claimant made this reported comment.

While the employer discharged the claimant for business reasons, the evidence does not establish that the claimant's conduct on August 29 or September 4 amounts to an intentional or substantial disregard of the standard of behavior the employer had a right to expect from her. Even if the claimant said during her conversation with Bobian, "I don't need this shit," her choice of words may not have been appropriate, but this comment does not rise to the level of work-connected misconduct. As of September 8, 2013, the claimant is qualified to receive benefits.

**DECISION:**

The representative's September 26, 2013 determination (reference 01) is reversed. The employer discharged the claimant for business reason, but the claimant did not commit work-connected misconduct. As of September 8, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css