IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CHRISTINE L GARITY
Claimant

TOYOTA MOTOR CREDIT CORPORATION
Employer

APPEAL NO. 06A-UI-11497-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/22/06 R: 03
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Christine Garity (claimant) appealed a representative's November 20, 2006 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Toyota Motor Credit Corporation (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 18, 2006. The claimant participated personally. The employer participated by Jodie Driscoll, Human Resources Generalist.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 21, 1999, as a full-time inventory control unit clerk. The employer counseled the claimant about talking too much. When the claimant left the meeting she asked her co-worker to help her stop talking. The employer then issued the claimant a written warning for talking after she was told to stop.

On October 26, 2006, the claimant and her fellow co-workers were eating Chex mix when the claimant came across a Brazil nut. The claimant could not remember the name of the nut and said she thought when she was a child they used to call them pigeon toes or nigger toes. One co-worker said that she remembered they were called nigger toes, too. Later that day the employer terminated the claimant and the co-worker.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did provide evidence of misconduct at the hearing. It is clear the claimant's language was offensive, inappropriate and careless. A single incident of failure to use common sense, offensive behavior or inappropriate language does not rise to the level of misconduct. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's November 20, 2006 decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/css