

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JANET S PAYNE
Claimant

APPEAL NO. 14A-UI-05799-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GOODWILL INDUSTRIES OF THE
HEARTLAND**
Employer

**OC: 05/04/14
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 8, 2014, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on July 9, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Artemio Santiago, and a witness, Moriah Woods. Mary Kating participated in the hearing on behalf of the employer with witnesses, Keith Smith, Wendy Bucklin, Deb Miller, and James Hollan. Exhibits 1 and 2 were offered by the claimant and sent to the employer for objections. The objection to the diagram based on it not being to scale is overruled. No legal objection was offered to Exhibit 2, the photograph. Since the record was not left open for any commentary by Smith, his comments are not part of the record. Exhibits 1 and 2 are admitted into evidence.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer from August 1, 2011, to May 8, 2014. She was promoted to assistant manager after three months. James Hollan was the store manager starting at the end of August 2013.

The claimant was issued a written warning and placed on probation in September 2013 for failing to adhere to the employer's pride values after complaints from staff about harsh treatment by the claimant. On April 3, 2014, Hollan issued a written warning and placed her on a second probation after a production clerk, Kevin Smith, complained that the claimant had aggressively approached him and accused him of not being able to do his job in front of other employees.

On the morning of May 7, 2014, the claimant had moved some Gaylord containers and racks of merchandise in the middle of pathways and in front of doorways and pallet jacks that made it difficult for employees to get through and perform their work. Smith saw the claimant doing this and asked her why she had moved the boxes and racks. The claimant responded that she was making things tidier, but this was not truthful as the boxes were in the way. Smith asked her if

she could pitch in and help move things, and the claimant took her cellphone out and began taking pictures. When Smith asked what she was doing, she replied she was taking pictures for a scrapbook that she was making. It took Smith and another employee about an hour to get the backroom cleared up. The claimant did not assist them.

Smith reported the claimant's conduct to management. On May 8, 2014, the human resources manager and the regional supervisor informed the claimant that she was being discharged for her conduct on the morning of May 7 and her past performance.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant and Smith's testimony was diametrically opposed in terms of Smith saying he saw the claimant had moved Gaylord containers and the claimant stating she did not move anything and could not move anything because of medical restrictions. The only other person who worked with the claimant and Smith that day was Moriah Woods. Woods did not recall much about what happened. She testified that she had witnessed the claimant move Gaylords in the past but not necessarily that day but she never saw her obstruct anything. This undercuts the claimant's testimony that she never moved Gaylords because of her medical restrictions. The standard of proof in an unemployment insurance benefits case is the preponderance of the evidence. I conclude that Smith testified credibly and without contradiction. I believe his testimony that the claimant moved items and did not assist him when he asked for help but instead took pictures (as shown in Exhibit 2).

The claimant's conduct on May 7, especially in light of past conduct and discipline, was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated May 8, 2014, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible..

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css