

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

KARI H JONES
PO BOX 396
WHEATLAND IA 52777-0396

CALAMUS/WHEATLAND COMMUNITY
SCHOOL DISTRICT
C/O BUSINESS OFFICE
PO BOX 279
WHEATLAND IA 52777-0279

DAVID M PILLARS
ATTORNEY AT LAW
615 – 10TH ST
DEWITT IA 52742

Appeal Number: 06A-UI-07151-DW
OC: 05/21/06 R: 04
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Kari H. Jones (claimant) appealed a representative's June 29, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the employer's account would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on August 16, 2006, in Davenport, Iowa. The claimant participated in the hearing with her attorney, David Pillars. Charles Freese, the superintendent, and John Cain, the elementary principal, appeared on the employer's behalf. During the hearing Employer's Exhibits One and Two and Claimant's Exhibit A, B, and C were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant has worked about 19 years for the employer. The last five years of her employment the claimant worked as a secretary for the elementary principal. The claimant works under yearly contract for the employer. Cain replaced the former elementary principal and started his job on July 1, 2005.

After working with the claimant about a month, Cain started noticing and documenting problems with the claimant's work performance and attitude. (Employer Exhibit One.) Even though Cain documented numerous issues or concerns, he did not document dates he addressed these concerns with the claimant. The claimant knew there was a problem between herself and Cain. The claimant asked to meet with Cain and Freese to work out a communication problem between the two of them.

On February 14, the claimant met with Cain and Freese. During this meeting Cain informed the claimant there were several problems with her work performance that she had to improve. The problem areas included the claimant's lack of confidentiality, lack of professionalism, lack of patience and lack of respect shown toward co-workers, the claimant's poor attendance and her inability to complete tasks in a timely manner. At the meeting Freese warned the claimant that if she did not make improvements, her contract may not be renewed for the next school year.

Subsequent to the February meeting, the claimant's attendance improved. Cain, however, concluded the other problem areas did not improve. When parents or employees still complained how the claimant had been rude or unprofessional, the employer did not talk to the claimant about the complaint. The employer also did not talk to the claimant about confidentiality issues when Cain either overheard remarks he did not believe the claimant should have made or that other employees reported the claimant allegedly made. The employer did not believe the claimant was able to satisfactorily complete projects on her own. Instead, the employer had to provide constant guidance to the claimant to produce a work product that met Cain's satisfaction. Prior to May 23, the claimant had no idea her job was in jeopardy.

On or about May 15, Cain completed the claimant's performance evaluation indicating her work performance was not satisfactory. About this time frame, Cain overheard the claimant tell parents who called about certain information that she had no idea and their guess was as good as hers. Again, even though Cain heard the claimant make this comment, he did not approach the claimant to let her know this kind of comment was unacceptable and tell her what she needed to do instead.

On or about May 15, Cain, Freese and the employer's attorney decided the claimant would not be offered a contract for the 2006-2007 school year. Also, the employer would either allow the claimant to resign or the employer would discharge her as of May 23, 2006. The employer waited until May 23 because school was over and there were no children at school after May 22, 2006.

On May 23, the employer told the claimant she had two options. When the claimant would not resign, the employer discharged her on May 23, 2006.

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 section 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

When a claimant is a long-term employee and has an excellent evaluation from a prior supervisor (Claimant Exhibit A) the evidence indicates a new supervisor has different priorities than a previous supervisor and evaluates work performance on a different standard. The employer documented problems and issues with the claimant from almost the beginning of the school year. But the employer did not address these concerns with the claimant until she requested a meeting in February. The facts indicate a significant communication problem existed between the claimant and her new supervisor. As a result, the claimant had no way of knowing she was not meeting the employer's expectations prior to the February meeting that she initiated.

As of February 14, 2006, the claimant knew or should have known her job was in jeopardy. As a result of the February meeting, the claimant's attendance improved. While there were still some incidents the employer documented, the number of the incidents documented was significantly lower than prior to the February meeting. Therefore, the facts establish the claimant tried to meet her new supervisor's expectations. While there were still some complaints from parents and colleagues, the employer did not address any of these concerns with the claimant to find out her version of the incident. Even when the employer personally overheard an inappropriate comment, the claimant was not advised that this was unacceptable so she could make changes to meet the employer's standards. A lack of communication between the claimant and her supervisor continued. Even though the claimant did the job to the best of her ability and understanding as to what the employer wanted and expected from her, she did not meet the employer's standards.

The claimant was not a "perfect" employee. As a result of the some incidents, the employer established business reasons for discharging the claimant. The facts do not, however,

establish that the claimant intentionally and substantially disregarded the employer's interests. Her work performance did not meet her new supervisor's standards, but she did not commit a current act of work-connected misconduct. Therefore, as of May 21, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's June 29, 2006 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of May 21, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs