

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH MORTIMER
Claimant

APPEAL NO: 14A-UI-03758-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

STELLAR MANAGEMENT GROUP V INC
Employer

OC: 03/16/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 4, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 29, 2014. The claimant participated in the hearing. Brittney Johnson, Human Resources Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general sanitation worker for Stellar Management Group V from July 10, 2012 to March 11, 2013. She was discharged after she left work due to illness.

The claimant worked the 10:30 p.m. to 6:30 a.m. shift. She has a chipped eye tooth that has caused her extreme pain and swelling on occasion. She was off work because of her tooth March 3 through 10, 2013, and provided a doctor's note excusing her absence. She was still in pain and the right side of her face was swollen March 11, 2013. She texted Plant Manager Travis Harbour before work and asked if she could stay home because her face was still swollen. Mr. Harbour did not respond so the claimant reported for work. She clocked in and went into the office. She saw Mr. Harbour and he apologized for not responding to her text message and explained he "spaced off." He then told the claimant she could go home before saying, "Actually, Mortimer, if you go home tonight I'm going to have to terminate you because everyone in the office wants me to terminate you." The claimant chose to go home anyway because her face was so swollen she could not wear her required safety glasses, she was vomiting, and had limited vision out of her right eye. Her boyfriend, who also worked for the employer, quit approximately two hours later after learning what happened with the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. 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 substantial and 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). While the employer maintains the claimant voluntarily quit her job, the claimant credibly testified her employment was terminated by Mr. Harbour. Because the claimant was present for the events of March 11, 2014, and the employer's witness was not, the claimant's first hand testimony carries more weight. Consequently, this case will be analyzed as a discharge from employment.

The claimant had been absent the previous six work days due to a painful and infected tooth that caused her face to swell, limited her vision and made her vomit. It is not unreasonable to believe that she was still experiencing the effects of her infected tooth and asked Mr. Harbour if she could stay home, and later, when he did not respond to her text message, if she could go

home, March 11, 2014. He initially told her he would have let her stay home if he had not "spaced off" and forgot to return her text message and then said she could go home but immediately changed his mind and stated if she left he would terminate her employment, making a vague reference about people in the office wanting him to discharge her. The employer confirmed the claimant did not have a history of any attendance or disciplinary actions against her and her job was not in jeopardy so it is difficult to know if Mr. Harbour was trying to blame his decision on the office or there was in fact someone or a group of people "in the office" who wanted the claimant's employment terminated. Regardless, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Therefore, benefits are allowed.

DECISION:

The April 4, 2014, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css