

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MOLLY HOPPER**  
Claimant

**APPEAL NO: 16A-UI-06729-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALGREEN CO**  
Employer

**OC: 08/30/15**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 6, 2016, reference 05, 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 July 5, 2016. The claimant participated in the hearing. Tim Day, Shift Lead; Ginger Fisher, Assistant Store Manager; and Tom Kuiper, Employer Representative; 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 beauty adviser for Walgreens from October 15, 2015 to May 12, 2016. She was discharged for insubordination.

The claimant had problems with her ex-boyfriend's new girlfriend and his mother outside the store and the claimant notified the employer of the situation. The two women also repeatedly called the store and made false complaints against the claimant. The employer was aware of the situation and understood they were trying to cause trouble for the claimant when they called to complain about her. The employer never took any disciplinary action against the claimant as a result of their false complaints.

On May 7, 2016, the claimant was working when the two women entered the store. The claimant was aware they were there and was called to the office to begin her computer training. Shift Lead Tim Day was in the office with the claimant while Assistant Store Manager Ginger Fisher went out to speak to the women. The claimant paced the floor in the office and was obviously upset because the women were complaining about her to Ms. Fisher. She repeatedly asked if she could go outside and Mr. Day told her "no" and said just let them say whatever they have to say and stay here. Finally the claimant said she was going to have a cigarette and Mr. Day told her that was not a good idea because she would have to walk past the women to get outside. The claimant left the office anyway and went outside. She gave a "fake" smile

when she walked by the women according to Ms. Fisher. Mr. Day was called to the pharmacy and approximately five minutes later was paged to the front of the store. When he looked outside he observed the claimant and the two women yelling at each other. Mr. Day went outside and stepped between all three of them and pushed them apart from each other. He instructed the claimant to go inside but she refused to do so. Mr. Day told her to go inside again and reminded her she was on the clock but the claimant would not listen. Finally Mr. Day told the claimant if she did not go back inside she would face termination. At that time the police arrived and the situation began to calm down. The claimant sat on a bench outside while Mr. Day and Ms. Fisher spoke to the officer. The police instructed all Walgreen's employees to go inside. As the claimant was walking in Mr. Day said, "I don't know why you did this. You're on the clock," and the claimant denied she was on the clock," before going to the break room. The officer talked to Mr. Day in the office and he told the police the employer did not want the claimant's ex-boyfriend's new girlfriend or his mother in the store anymore. The police then spoke to the claimant in the break room before she left without clocking out around 1:00 p.m. She was scheduled to work until 4:00 p.m.

The claimant worked May 8, 2016, as the store manager was not in that day. On May 9, 2016, the employer suspended the claimant. The employer's witness believed the suspension was for investigation into whether the claimant was insubordinate. The employer took statements from Mr. Day and Ms. Fisher and made the decision to terminate the claimant's employment. On May 12, 2016, the employer notified the claimant she was being discharged. The employer's witness believes the termination was for insubordination because the claimant did not listen when Mr. Day told her to stay inside or when he told her to go back inside and when she went home without the permission of management.

The claimant received a verbal warning March 27, 2016, for an attendance related issue.

#### **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 § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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).

The claimant did demonstrate an insubordinate attitude in disregarding Mr. Day's instructions to stay inside and away from the two women in the store complaining about her and when she failed to go back into the store when he told her to do so just before the police arrived. The claimant then left work without telling management or calling to state she was not returning to work after lunch.

The claimant had been harassed by the two women while she was at work on several occasions. They frequently called the employer to lodge false and frivolous complaints against the claimant in an apparent effort to cause her to lose her job. The employer recognized the complaints were of a personal nature and unfounded and disregarded the women's phone calls. The phone calls still upset the claimant however.

On May 7, 2016, the two women entered the store for the first time when the claimant was working and began complaining about the claimant to Ms. Fisher. The claimant was understandably upset by the situation. While she should have heeded Mr. Day's instructions to stay in the office and to go back in the store after the women followed her out of the store and started an argument with her, the claimant's reactions, including leaving for lunch and not returning, were an isolated incident of poor judgment. She had not received any previous written warnings and had only received a verbal warning six weeks earlier for attendance. Although not condoning the claimant's behavior May 7, 2016, her actions on that date do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

**DECISION:**

The June 6, 2016, reference 05, 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/pjs