IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BARBARA E HAGENS
Claimant

R J PERSONNEL INC
TEMP ASSOCIATES
Employer

APPEAL NO. 07A-UI-04573-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/15/07 R: 04
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Barbara Hagens (claimant) appealed a representative's May 1, 2007 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Temp Associates (employer) for conduct not in the best interests of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 22, 2007. The claimant participated personally. The employer participated by Mike Thomas, Account Manager, and Ellen Lentz, On Site Coordinator at Monsanto. The claimant offered one exhibit, which was marked for identification as Exhibit A. Exhibit A was received into evidence. The employer offered one exhibit, which was marked for identification as Exhibit One. Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on April 3, 2006, as a full-time temporary clerk assigned to work at Monsanto. She told the employer that she had thyroid issues. The claimant was attempting to get her medication regulated, but until that time she was jittery and emotional. The employer did not realize that thyroid issues could cause emotional outbursts. On February 21, 2007, the employer issued the claimant a written warning for inappropriate language. The claimant called a co-worker a "fat fucker". This type of language was common in the workplace. The employer warned the claimant that further infractions could result in her termination from employment.

On April 12, 2007, the claimant noticed that she was not given credit for her work on a report. The claimant's supervisor told the claimant that the claimant should make certain she was on the report. The supervisor was a friend of the claimant's outside of work. The claimant was upset and went to the supervisor's office. She was shaking and jittery from her condition and

wanted to vent. The claimant told the supervisor that if she was not going to get credit for the work, she was not going to do the report. The supervisor did not respond. The claimant walked back to her job site and continued working. The next day the claimant did the report. On April 16, 2007, the employer terminated the claimant for inappropriate conduct.

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). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide sufficient evidence of a final instance of misconduct at the hearing. The claimant was venting to a supervisor who told her to make certain to get credit for the report. This supervisor was also the claimant’s friend. The claimant appeared to be more upset because she was suffering from a thyroid condition that made her more emotional. The claimant had been given a previous warning for inappropriate language when she used language common in the workplace. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's May 1, 2007 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/kjw