

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELLEN M JACKSON**  
Claimant

**APPEAL NO. 07A-UI-08132-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALL AMERICAN HOMES OF IOWA LLC**  
Employer

**OC: 07/22/07 R: 04  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Ellen M. Jackson (employer) appealed a representative's August 16, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from All American Homes of Iowa, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 14, 2007. The claimant participated in the hearing. Dan Stetzer appeared on the employer's behalf. 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:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on November 10, 2003. She worked full time as human resources manager at the employer's modular home manufacturing facility. Her last day of work was July 19, 2007. The employer discharged her on that date. The stated reason for the discharge was further lapses in judgment in employee communications after prior warnings.

In 2005, the claimant had been given a warning for making some derogatory references to some employees. After that warning, the claimant had received additional managerial training which included training in proper and more sensitive communications with employees. In early February 2007, the employer had given the claimant a performance review in which the employer reflected a continued concern regarding exercises of poor judgment on the part of the claimant. Later in February the employer also gave the claimant a corrective action notice that it considered her to have exercised poor judgment in comments made to hourly employees regarding her own and other managers' performance reviews. She was advised through these February notices that the employer considered her job to be in jeopardy if she continued to demonstrate poor judgment in her communications.

On July 17, the claimant was conversing in the lunchroom with an employee who is black. He was wearing two tee-shirts, even though it was a hot day. The claimant commented on this to the employee, expressing surprise that he would be wearing two shirts on such a hot day, and then asked him if his wearing of the two shirts had “something to do with your color?” The employee responded that it was just the way he had always worn shirts since he was a child. He later remarked to another supervisor about the claimant’s comment, and that supervisor passed along the reference to Mr. Stetzer, the assistant general manager. The claimant did not become aware of the employee’s concern on the comment, and went to him to explain she had not meant any harm. The employee understood this to be an apology, which he accepted. However, the employer determined this was an additional unacceptable lapse in judgment on the claimant’s part, and discharged her.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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.

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 focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer’s interest, or
    2. The employee’s duties and obligations to the employer.

The claimant's additional lapse in judgment after prior warnings regarding showing good judgment in her communications with employees shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative’s August 16, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of July 19, 2007. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer’s account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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