

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRYSTAL D MCCONNELL
Claimant

APPEAL NO. 13A-UI-07942-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UTICOR TECH
Employer

OC: 06/09/13
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Unicor Tech filed a timely appeal from a representative's decision dated June 28, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on August 13, 2013. The claimant participated. Participating as a witness for the claimant was her husband, Mr. Mohamed Elsharabi. Employer participated by Mr. Vikram Kumar, Vice President/Co Owner; Mr. Sumit Vaidya, Operations Manager; and Mr. Raunaq Bhushan, Department Head.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Crystal McConnell was employed by the captioned employer from September 5, 2012 until June 11, 2013 when she was discharged from employment. Ms. McConnell was employed as a full-time production worker and was being paid by the hour. Her immediate supervisor was Ms. Rodriguez.

The claimant was discharged based upon a series of events that took place on June 7 and June 11, 2013. On June 7, the claimant overheard a supervisor making reference to "bonuses" with another hourly employee. Ms. McConnell perceived that the other employee had received a bonus, although the claimant had not, and the claimant became upset about the issue and questioned company managers about the bonus issue stating that management was "lying" about the bonus issue. Because of what the employer considered to be a disruptive conduct by the claimant on June 7, Ms. McConnell was called to a meeting on June 11, 2013 to be issued a disciplinary action.

During the initial meeting on June 11, 2013, Ms. McConnell became increasingly angry and upset and called the company operations manager a "liar." Ms. McConnell was issued a hand-drafted copy of a disciplinary action for her conduct on June 7. At the conclusion of the

meeting the claimant considered herself to have been discharged and began to leave the facility with the hand-drafted written warning.

The employer had not intended to discharge Ms. McConnell but only to warn her about unacceptable behavior on the call floor and concluded that the claimant was quitting employment when she left the meeting and began to move towards a company entrance. Mr. Sumit Vaidya caught up with the claimant and extracted the hand-written warning from Ms. McConnell's hand and also made a reference to the claimant leaving without turning in her access fob.

Ms. McConnell then proceeded back to the company's production area where she summoned her husband, telling him that she had been discharged and showing him a red mark on her arm she alleged had been caused by Mr. Vaidya when he took the written warning back and promised later to substitute a copy. The claimant and Mr. Elsharabi, her husband, then proceeded back to the conference room where a verbal confrontation ensued between Ms. McConnell and her husband and company management about the incidents of June 11, 2013. The employer attempted to issue a second disciplinary warning to the claimant for her conduct earlier that day and informed the claimant at that time that she was being discharged from employment. Mr. Elsharabi was informed that he was welcome to continue to work for the company.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter the claimant was discharged based upon her demeanor and statements that she made to and about company management during disciplinary meetings that were held on June 11, 2013. On that date the claimant had been summoned to the meeting to be warned about her previous behavior on June 7 when she had argued with a supervisor and stated that the supervisor was lying about a bonus issue. The claimant had overheard a conversation between the supervisor and an hourly employee and concluded that bonuses had been paid out when they had not. When the claimant did not accept the explanation given she made inappropriate statements about the truthfulness of the supervisor.

When called into the first meeting on June 11, 2013, Ms. McConnell again became argumentative and would not accept the employer's explanation and again referred to the company's operations manager as a "liar." The situation escalated when the claimant was unwilling to sign a hand-prepared warning and was also unwilling to return the original copy of the warning to the employer so a copy could be substituted. Ms. McConnell then went to the production area to summon her husband who was also employed by the company. Ms. McConnell returned to the conference room and again engaged in inappropriate behavior by yelling at her employer and arguing about issues that were unrelated to the disciplinary action that had been previously given to her. A decision was made to terminate Ms. McConnell from her employment when the claimant stated to the company's operations manager that in effect she should be writing him up for poor performance rather than the company writing her up.

The administrative law judge concludes that although the claimant may have been mistakenly given the wrong impression about bonus payments by statements that were being made by a supervisory and an hourly employee, the claimant nevertheless repeatedly acted inappropriately when company management attempted to explain the bonus issue to her. Ms. McConnell engaged in angry yelling behavior and repeatedly called members of company management "liars" and was unwilling to follow a reasonable directive to leave the original disciplinary action for company records and to allow the employer to substitute a copy of the original. After concluding the first meeting Ms. McConnell later returned with her husband and once again displayed an angry demeanor and argumentative and stated that the company's operations manager was the one that deserved the warning.

An employer has a right to expect decency and civility from its employees and an employee's use of offensive language in a confrontational, disrespectful or name-calling context may be recognized as misconduct disqualifying the employee from the receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). Even an isolated instance of inappropriate language can constitute misconduct and warrant disqualification for unemployment insurance benefits if it serves to undermine a superior's authority. Deever v. Hawkeye Window Cleaning, Inc. 447 N.W.2d 418 (Iowa Ct. App. 1989).

Based upon the evidence in the record the administrative law judge concludes that Ms. McConnell was discharged for misconduct in connection with her employment and is accordingly disqualified from the receipt of unemployment insurance benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because the claimant has been deemed ineligible for benefits any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The representative's decision dated June 28, 2013, reference 01, is reversed. The claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of the claimant's overpayment is remanded to the Claims Section for investigation and determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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