

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORI A ZELLER**

Claimant

**APPEAL NO. 07A-UI-04775-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TIMBERLAND PARTNERS**

**MANAGEMENT CO INC**

Employer

**OC: 04/15/07 R: 02  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge

Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Timberland Partners Management Company, Inc. (employer) appealed a representative's April 30, 2007 decision (reference 01) that concluded Lori A. Zeller (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 29, 2007. The claimant participated in the hearing. Jessica Campbell, Michelle Ogden, and Sue Swanson 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.

**ISSUES:**

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 31, 2005. The claimant worked as a full-time community manager. Ogden supervised the claimant. At the time of hire, the employer gave the claimant a copy of the employer's handbook. The handbook informed employees they could be discharged if they did not treat customers and associates courteously and respectfully.

During her employment, the claimant received several written warnings for failing to perform her job satisfactorily. The most recent warning for this occurred on March 16, 2007. Job performance problems were not the reason for the claimant's employment separation because Ogden noticed that the claimant's work performance had been improving.

The claimant had problems with a maintenance employee, J.H. The claimant tried to work with him but found him increasingly more frustrating. In early April, J.H. dropped his pants while he

was in the claimant's office. The claimant was appalled by his behavior and contacted the Bill, the regional maintenance supervisor, about this incident.

The morning of April 13, J.H. reported some comments or rumors he had heard about Campbell. The claimant was looking into the rumors and told J.H. he could not reveal the source of these comments to anyone else. Around 4:00 p.m., the claimant was talking to Campbell in her office. J.H. came in the claimant's office and told Campbell who had made the comments about her. The claimant became very upset and frustrated with J.H. because he did exactly what she had specifically told him he was not do to. The claimant was so upset at him that she told him to shut his f----- mouth. She then told him to leave her office. The claimant was so angry at J.H. she does not remember if she swore at him, but could have.

Campbell did not say anything or act offended after J.H. left the claimant's office. The claimant looked for J.H. a little later because he had appeared offended by the claimant's comments. The claimant did not find him.

J.H. contacted Bill about the incident with the claimant and talked to Campbell around 5:00 p.m. J.H. told Campbell how offended he had been by the claimant's remarks. They decided to report the incident to Ogden. Campbell, J.H., and another employee, who the claimant did not recall being in the office, reported the incident to Ogden. The employer decided to discharge the claimant because she swore at an employee she supervised. The employer did not talk to the claimant about the April 13 incident. On April 16, the employer discharged the claimant. On April 16, the claimant had no idea why she was discharged and was in shock when the employer talked to her.

The claimant established a claim for unemployment insurance benefits during the week of April 15, 2007. The claimant filed claims for the weeks ending April 21 through May 19, 2007. She received her maximum weekly benefit amount of \$360.00 for each of these weeks.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The claimant knew and understood the employer required employees to respect one another. Prior to April 13, the employer had not received any complaints about the language the claimant used at work. If the April 13 incident would not have occurred, the employer would not have discharged the claimant.

On April 13 after the claimant specifically told J.H. not to reveal the source of some rumors, he told the source to Campbell, the person that was the subject of the rumors. Needless to say, the claimant "lost her control," after J.H. made this comment in addition to his mooning incident that occurred about two weeks earlier. The claimant used the f word when she told J.H. to shut up and to get out of her office. As a supervisor, the claimant is held to a higher standard than other employees. As a result of the claimant's profane outburst, she intentionally and substantially disregarded the standard of behavior the employer had a right to expect from a supervisor. The employer discharged the claimant for work-connected misconduct. Even though the claimant was remorseful for her comments, she used profanity twice and demeaned J.H. in the presence of another employee. As of April 15, 2007, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending April 21 through May 19, 2007. She has been overpaid \$1,860.00 in benefits she received for these weeks.

**DECISION:**

The representative's April 30, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 15, 2007. This disqualification continues until she 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. The claimant is not legally entitled to receive benefits for the weeks ending April 21 through May 19, 2007. She has been overpaid and must repay a total of \$1,860.00 in benefits she received for these weeks.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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