

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 11-IWDUI-263
OC: 07/31/11
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

SUSAN M. DINGMAN
3510 N. 9th STREET, LOT 321
CARTER LAKE, IA 51510-1367

IOWA WORKFORCE DEVELOPMENT
QUALITY CONTROL
JON NELSON
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

JOE WALSH, IWD

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the Department. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

NOVEMBER 21, 2011
(Dated and Mailed)

Iowa Code section 96.5(2) – Causes for disqualification, Discharge for misconduct

STATEMENT OF THE CASE

The appellant, Susan Dingman filed an appeal from a decision issued by Iowa Workforce Development (IWD) dated October 4, 2011, reference 01, holding that she was disqualified from receiving unemployment insurance benefits because she was discharged for violation of company rules.

The case was transmitted from Workforce Development to the Department of Inspections and Appeals (DIA) on October 26, 2011, for scheduling of a contested case

hearing. On October 27, 2011, DIA issued Notices of Hearing. The case proceeded to a hearing by telephone before Administrative Law Judge Robert H. Wheeler, on November 17, 2011. Appellant Susan Dingman appeared pro se and testified. Jon Nelson, Lori Adams, David Ecklund and Paula Fastenau appeared and Ms. Fastenau and Ms. Adams testified on behalf of Workforce Development. Appellant's Exhibits A through H, and IWD Exhibits 1 through 9 entered the record without objection. Appellant Susan Dingman requested production of a recording of a meeting with Ms. Fastenau on July 21, 2011. IWD reviewed the contents of the recorder and advised that no such recording exists.

ISSUE

Whether the Department correctly determined that the claimant was disqualified from receiving unemployment insurance benefits because she was discharged for misconduct.

FINDINGS OF FACT

Ms. Dingman began working for the respondent, IWD, on March 18, 2011, under the supervision of Ms. Fastenau. Ms. Dingman worked in workforce integration. IWD has work rules set forth in a handbook, a copy of which was provided to Ms. Dingman. (Fastenau testimony).

Ms. Fastenau noted early problems with attendance and punctuality. Ms. Dingman was habitually 5 minutes late for work. This lack of punctuality negatively impacted the staff meetings that occurred at the start of the work day. (Fastenau testimony).

On April 4, 2011, a written work directive was issued to Ms. Dingman regarding her absenteeism. (Fastenau testimony).

On May 4, 2011, IWD suspended Ms. Dingman for one day for a violation of Work Rule 3. (Personal Action). Ms. Dingman engaged in an argument with another employee over use of the printer/copy machine. The disagreement involved Ms. Dingman "charging" after the other employee and engaging in a loud confrontation. During this confrontation, Ms. Dingman threatened physical harm to the other employee. (Fastenau testimony).

On May 19, 2011, IWD suspended Ms. Dingman for three days for a violation of Work Rule 2 (Work Performance). Ms. Dingman had been instructed not to stamp and carry the office mail because she took too long to accomplish the task. Ms. Dingman had taken that opportunity to take unauthorized breaks. However, after being told not to process the mail, Ms. Dingman did so, despite intervention from the employee charged with the task. When supervisors attempted to speak with Ms. Dingman about this, she covered her ears with her hands and yelled that she did not have to listen. This occurred in the work area in the presence of other employees and IWD clients. (Fastenau testimony).

On July 5, 2011, IWD issued a ten day suspension to Ms. Dingman for violations of Work Rules 1, 2, 3, and 4. (Exhibit 6). The violation of Rule 1 involved tardiness on April 15, May 6, May 9, May 10, June 16, June 17, and June 21 of 2011. The violations of Work Rules 2, 3, and 4, involved incidents on several dates.

On June 3, 2011, Ms. Dingman refused to follow written and oral instruction regarding noise in the work area when she ran a vacuum cleaner at 2:40 P.M. while IWD clients were present. This task should have been performed at the end of the work day.

On June 3, 2011, Ms. Dingman left the staff computer monitor screen in the membership area on displaying confidential information to job seekers while she left to conduct a personal conversation in her cubicle.

On June 24, 2011, Ms. Dingman left the staff monitor station and screen unattended on five separate occasions.

On June 27, 2011, Ms. Dingman engaged in a personal phone call while two new members were completing enrollment. Staff computers were displaying confidential information at this time to new members and existing members.

On June 28, 2011, Ms. Dingman improperly used a confidential document to access a member's IWORKS information on a computer without authorization.

On June 29, 2011, Ms. Dingman violated the policy requiring workers to greet new clients, shake hands, and determine their needs. Ms. Fastenau saw Ms. Dingman verbally instruct a new client on completion of documents while remaining seated in her cubicle. Ms. Fastenau intervened and attended to the new client. When directed by MS. Fastenau to follow the policy, Ms. Dingman stated, "I have a problem with shaking people's hands, and I'm not gonna." (Exhibit 6; Fastenau testimony).

On July 19, 2011, prior to the start of the business day, Ms. Dingman acknowledged that she had reviewed the policy regarding membership procedures. Later that morning, other employees saw Ms. Dingman fail to greet two new clients, shake hands and ask questions to determine their needs. She sat in her cubicle and motioned them to come over to her location. On July 21, Ms. Fastenau asked Ms. Dingman to meet to discuss possible disciplinary action. When asked why she did not follow the membership procedure Ms. Dingman stated, "I quit. I'm going to file a grievance against you and this place...I hate this place." Ms. Dingman stood up and left Ms. Fastenau's office, slamming the door loudly, went to her cubicle and retrieved her purse, and threw her keys at Ms. Fastenau while leaving the building. MS. Dingman left before the end of the work day without permission.

Ms. Dingman testified that she was frustrated because she thought the meeting would deal with her complaints against another employee that she felt was harassing her. Ms. Dingman disputed throwing her keys, stating that she dropped them in Ms. Fastenau's hand. (Exhibit C; Dingman testimony).

On July 22, 2011, on the advice of the union steward, Ms. Dingman called Ms. Fastenau and stated that she had no intention of quitting, but had been angry because she felt that the purpose of the meeting had been changed or misrepresented. IWD placed Ms. Dingman on paid suspension pending an investigation. On July 28, 2011, Ms. Dingman met with Ms. Fastenau and discussed the questions that she had been asked on July 21, 2011, before she left the meeting. (Exhibits 10, E; Dingman testimony).

On August 1, 2011, IWD discharged Ms. Dingman by letter, as a result of the investigation into the incident of July 21, 2011. (Exhibit 8; Fastenau testimony).

On July 31, 2011, Ms. Dingman applied for unemployment insurance benefits. On October 4, 2011, IWD issued the decision at issue, reference 01, denying benefits because Ms. Dingman had been discharged from her employment for misconduct. (Exhibit 2).

REASONING AND CONCLUSIONS OF LAW

Iowa law provides that an employee who is discharged from work for misconduct shall be disqualified for unemployment benefits. Iowa Code 96.5(2). "Misconduct" is defined by the Iowa Administrative Code 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." 871 IAC 24.32(1)(a).

The preponderance of the evidence established that Ms. Dingman received a copy of the Work Rules handbook when she joined IWD. Ms. Dingman acknowledged her familiarity with those rules on several occasions. Nonetheless, Ms. Dingman had repeated problems with tardiness, confidentiality, and the procedures for greeting new clients. When confronted with her failures in these regards, Ms. Dingman responded with anger and tantrum behavior.

IWD provided Ms. Dingman with a written directive on April 4, 2011, shortly after she was hired, regarding tardiness. IWD suspended Ms. Dingman on three occasions for progressively longer periods for misconduct involving rules violations. Ms. Dingman did

not dispute these violations. She only argued that her tardiness had been covered by taking leave.

On July 21, 2011, when Ms. Dingman again faced correction for a violation of the greeting procedure, she became angry and created a scene at the work place. Although IWD did not accept her verbal statement that she quit as a resignation, she was suspended pending an investigation. Ms. Dingman's only dispute with the account of this angry scene involved her statement that she did not throw her keys. As a result of the investigation, IWD discharged Ms. Dingman for repeated rules violations on August 1, 2011.

A preponderance of the evidence established that Ms. Dingman's repeated rules violations constituted "misconduct" within the meaning of Iowa Code 96.5(2) and 871 IAC 24.32(1)(a).

DECISION AND ORDER

The department's decision dated October 4, 2011, disqualifying Ms. Dingman from receiving benefits on the basis of her discharge for misconduct is **AFFIRMED**. The Department shall take any actions necessary to implement this decision.

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