

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSIE HACKETT
Claimant

APPEAL NO: 07A-UI-00135-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DENTAL ARTS INC
Employer

**OC: 12/03/06 R: 02
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

Dental Arts, Inc. (employer) appealed an unemployment insurance decision dated December 21, 2006, reference 01, which held that Jessie Hackett (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 23, 2007. The claimant participated in the hearing. The employer participated through owner Scott Hackett; Jim Daniels; and Attorney Ann Holden Kendell. 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:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time office manager and plaster bench worker from March 31, 2006 through December 1, 2006 when she was discharged. She and the employer were married but separated from each other in September 2006. The employer reported the claimant's work performance in the past month had dropped and he never knew whether she would be at work or when she would leave. One of her job duties was to answer the phone and the claimant spent a lot of time on her cell phone so was unable to answer the office phone. The claimant was also responsible for completing the year end billing and the employer was led to understand that she refused to do that work.

The claimant admitted that both she and her husband were letting their personal relationship interfere with her performance as an employee. She admitted they both fought with each other at work and that the problems from the marriage were spilling over into the business. However, she felt that her husband caused most of the problems and thought they would be fine if he left her alone. The claimant acknowledged that she was sometimes on her personal cell phone so

could not answer the business phone. She also admitted that she walked off the job after arguing with her husband and left work that had to be completed before the end of the day.

The claimant filed a claim for unemployment insurance benefits effective December 3, 2006 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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 section 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 claimant and the employer were married and apparently going through a difficult separation. The employer discharged the claimant because

he could no longer rely on her to perform her job duties as she was not willing to follow his directives. The claimant contends that her job performance had not changed but readily admitted the problems from the marriage were spilling over into the employer's business. Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of her employer. Myers v. IDJS, 373 N.W.2d 507 (Iowa 1983). The evidence is clear that the claimant would continue to let the problems arising from her marital problems with her husband interfere with her performance as her husband's employee. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated December 21, 2006, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,004.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs