

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE N WABASHA
Claimant

APPEAL NO: 09A-UI-19527-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLORIST DISTRIBUTING INC
Employer

OC: 11/29/09

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Julie N. Wabasha (claimant) appealed a representative's December 29, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Florist Distributing, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 9, 2010. The claimant participated in the hearing. Mike Jones appeared on the employer's behalf and presented testimony from two other witnesses, Lenny Houts and Jenny Scheurenbrand. 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 March 9, 2005. She worked full time as a hard goods buyer. Her last day of work was November 27, 2009. The employer discharged her on that date. The reason asserted for the discharge was over purchasing of inventory.

Over the past year the employer had been attempting to curtail the amount of slow-moving goods inventory in order to control costs. The employer was seeking to move to more of a central purchasing system with day to day ordering of needed goods. There had been general discussion with the claimant and other buyers regarding this direction, and there had been a few specific instances, such as when the claimant ordered satin pillows and crosses in January 2009 where the employer questioned her as to whether the order was necessary in light of the desire to reduce inventory. The most recent discussion with her was on November 18, which again was a general discussion regarding the direction the employer wished to take. She was not informed that her job was in jeopardy or that she was being disciplined for occurrences where she had made orders the employer had questioned. She was not instructed that she could not order any supplies that were not based on a presale order or that orders without

presale orders should be approved in advance. She previously had discretion to place orders as she deemed necessary.

On November 25 there was a conference call among the buyers regarding the desirability of ordering some unadorned artificial Christmas wreaths for the client store florist shops to customize for the holidays. The consensus in the call was that many of the shops would be interested in such a product, even though most shops had not taken advantage of an option to prebook an order; only 12 wreaths were presold by that date. The claimant believed that there was a demand for the product, and on November 25 ordered 610 of the wreaths. These were delivered to the employer on November 27. The claimant sent out a promotion to the shops on November 27 advertising the wreaths at ten percent off as a "Black Friday" promotion.

Upon learning of the claimant's purchase of the additional inventory, the employer concluded that the claimant was not acting in the employer's interests and determined to discharge 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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her additional purchase of the wreaths on November 25. Misconduct connotes intent. Huntoon, supra. One way of establishing intent is for an incident to reoccur after being informed that continued reoccurrence would result in discharge; the claimant had not previously been warned that future incidents could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact,

the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant ordered the wreaths knowing she was acting contrary to the employer's wishes or interests, as compared to believing she had discretion to anticipate and fill a seasonal demand. Under the circumstances of this case, the claimant's action was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's December 29, 2009 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs