

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHIRLEY A GODFREY
Claimant

APPEAL NO. 09A-UI-04057-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MADDEN LTD
Employer

OC: 01/11/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Madden Ltd., filed an appeal from a decision dated March 6, 2009, reference 02. The decision allowed benefits to the claimant, Shirley Godfrey. After due notice was issued a hearing was held by telephone conference call on April 8, 2009. The claimant participated on her own behalf. The employer participated by General Manager Al Irey.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Shirley Godfrey was employed by Madden from August 19, 2008 until November 12, 2008 as a full-time dispatcher. She was on a 90-probationary period before becoming a permanent employee. Although she received training, and had other staff to whom she could refer questions, the accuracy of her work did not improve. General Manager Al Irey did not give her any formal warnings about her errors, he would only point them out to her. There were no evaluations given at intervals to track her progress and she was never told her job was in jeopardy.

The employer expected to be able to deliver a load in Kentucky on November 11, 2008, but when the driver arrived there was no appointment scheduled. A check of the records shows Ms. Godfrey had made the appointment for November 13, 2008, and the driver had to wait some period of time before the customer could work him into the schedule.

The claimant was discharged November 12, 2008, by Mr. Irey because things were “not working out.” When questioned he told her it was because she was making too many mistakes. The employer acknowledged other staff also made errors, as he did himself, but the claimant was simply not improving and kept making similar errors over and over.

REASONING AND CONCLUSIONS OF LAW:

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 to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, 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 misconduct warrants denial of unemployment benefits are two separate decisions. Pierce v. IDJS, 426 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984).

There is no indication the claimant was being careless but instead was simply not "catching on" to the complexities of the computer system. The employer acknowledged she never improved in spite of receiving the training and being able to refer her questions to others. The record establishes the claimant was simply not able to perform her job to the satisfaction of the employer but there is no evidence of willful and deliberate failure to perform the work as expected. Disqualification may not be imposed.

DECISION:

The representative's decision of March 6, 2009, reference 02, is affirmed. Shirley Godfrey is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs