

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JENIFER L FROST
753 CLOVERDALE AVE
WATERLOO IA 50703**

**PROFESSIONAL OFFICE SERVICES INC
POS INC
2757 BURTON AVE
PO BOX 450
WATERLOO IA 50704-0450**

**Appeal Number: 04A-UI-03552-HT
OC: 02/29/04 R: 03
Claimant: Appellant (1)**

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 Workforce Development. 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)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Jenifer Frost, filed an appeal from a decision dated March 23, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on April 21, 2004. The claimant participated on her own behalf. The employer, POS, Inc., participated by Production Manager Mike Bengen, Human Resources Director Roger Smith and General Manager of Folder Design, Inc. Paul Buchanan. The employer was represented by Attorney Beth Hansen.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jenifer Frost was employed by POS, Inc., from July 30, 1998 until March 3, 2004. She was a full-time production worker.

On February 6, 2004, the claimant received a written warning regarding her negative work attitude and use of offensive language. She was notified her job was in jeopardy if there were any further incidents.

On March 1, 2004, the department was having a birthday celebration for an employee who worked next to Ms. Frost's workstation. As the people in the department gathered for the celebration, the claimant was requested to turn off her machine to reduce the noise. She replied, "It's my machine, I'll turn it off when I want to. Kiss my ass." This was heard by General Manager Paul Buchanan and he waited until after the celebration to notify Production Manager Mike Bengen. The claimant was sent home and the matter was referred to Human Resources Director Roger Smith. The three of them examined the claimant's disciplinary history and the decision was made to discharge her. She was notified on March 3, 2004.

The employer offered into evidence several exhibits which were declined by the administrative law judge.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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 claimant had been advised her job was in jeopardy as a result of her poor attitude and offensive language. In spite of the warning she displayed rude, uncooperative and offensive behavior when asked to turn off her machine to allow for the birthday celebration. Supervisors and co-workers heard her comments. This created an unpleasant atmosphere for the birthday celebration as well as being insubordinate and offensive. This is conduct not in the best interests of the employer and the claimant is disqualified.

The employer's attorney wanted to present into evidence documents dealing with the employer's policies and prior warnings given to the claimant. However, the claimant did not dispute she had received and knew the policies. She did not dispute the testimony of the employer's witnesses regarding the incidents of March 1, 2004, or that she was given a final written warning for the same type conduct. The documents were therefore redundant and repetitive of the testimony of both parties. Such testimony is not admissible under the provisions of Iowa Code chapter 17A.

DECISION:

The representative's decision of March 23, 2004, reference 01, is affirmed. Jenifer Frost is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/kjf