

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANET E ENDERLIN
Claimant

APPEAL NO. 08A-UI-11040-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RISIUS-SC INC
USA CONSULTING
Employer

OC: 10/12/08 R: 1
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Janet Enderlin, filed an appeal from a decision dated November 19, 2008, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 10, 2008. The claimant participated on her own behalf and with witness Joyce Phelps. The employer, USA Consulting, participated by District Manager Dennis Ingle, Manager Renee Drown and Employment Consultant Heidi Campbell.

ISSUE:

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

FINDINGS OF FACT:

Janet Enderlin was employed by USA Consulting from March 14, 2005 until October 14, 2008 as a full-time employment consultant. Manager Renee Drown had reported her concerns to District Manager David Ingle about conduct and comments by the claimant which were of a racist nature. She had not put black or Hispanic applicants into the computer system, and one time had apologized to a white applicant that she had had to deal with black applicants first. Mr. Ingle, on at least two occasions, has spoken to the entire staff of that office and made it clear all applicants should be considered regardless of race or gender. The claimant had left a note for Ms. Down at one point referring to an applicant as “queer.”

On October 9, 2008, Ms. Drown heard the claimant speaking with an applicant. Ms. Enderlin made a statement to the effect that if Barack Obama became president whites would be in the minority and that black people “already think they can get away with murder.” When the applicant said he had no problems with race the claimant responded that that if he worked with the black people who came into the office, he would be racist, too.

Ms. Drown did not make any comment to Ms. Enderlin at that time because previous admonitions to her about such remarks had not been effective. Instead she reported the

incident to Mr. Ingle. He consulted with Owner Steve Risius who instructed him to discharge the claimant. Mr. Ingle and Ms. Drown discussed it further after hours on Monday, October 13, 2008, and the next day he came to the office and discharged the claimant. One of the employer's main concerns was that the claimant acted in a supervisory role to the temporary workers on her caseload and the racist remarks were made to them or about them. This could have resulted in lawsuits for harassment or discrimination.

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 claimant denies any and all allegations of making racist remarks. However, she could not provide any explanation for Ms. Drown and Ms. Campbell making up such stories other than that the employer wanted to get rid of her because of her age and that Ms. Campbell was a good friend of Ms. Drown. The administrative law judge does not find this explanation to be convincing. The reports of the claimant's attitude, opinions and remarks were specific and consistent among the employer's witnesses to be so lightly dismissed. The claimant's witness was not employed by USA Consulting during the time period in which her remarks were made.

The administrative law judge finds the claimant was discharged for inappropriate remarks regarding the race of applicants and did treat them differently than white applicants. This is a violation of the employer's policies and could have exposed it to legal repercussions for

discrimination. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of November 19, 2008, reference 01, is affirmed. Janet Enderlin is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css