

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDY L JESSEN
Claimant

APPEAL NO. 13A-UI-12535-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

CABLE ONE INC
Employer

OC: 10/06/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated October 31, 2013, reference 01, which denied unemployment insurance benefits. After due notice was provided, a hearing was held in Sioux City, Iowa, on January 14, 2014. Ms. Jessen appeared personally. Appearing on behalf of the claimant was her attorney, Mr. Glenn Metcalf. Appearing as subpoenaed witnesses by the claimant were Ms. Leah Ronfeldt, Regional Sales Manager and Ms. Tamera Harlow, Regional Business Manager. The employer participated by Ms. Michelle Hawkins, Hearing Representative (by telephone). Also appearing as witnesses for the employer were Leah Ronfeldt and Tamera Harlow. Employer Exhibit A was received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Lindy Jessen was employed by Cable One, Inc. from October 11, 2012 until October 9, 2013 when she was discharged from employment. Ms. Jessen was employed as a full-time traffic coordinator for Cable One, Inc. and was paid by the hour. Her immediate supervisor was Tamera Harlow.

Ms. Jessen was actively recruited to begin employment with Cable One, Inc. by Ms. Leah Ronfeldt, the company's regional sales manager. The claimant had been recruited based upon Ms. Ronfeldt's knowledge that Ms. Jessen was a good worker and pleasant to work with. The employer was aware at the time of Ms. Jessen's hire that Ms. Jessen had no previous experience as a traffic coordinator and that the claimant did not have the numerous technical skills that she would eventually need to perform at the level of competence expected by the employer. The employer initially was confident, however, that Ms. Jessen would gain the necessary skills through on-the-job training.

As time progressed, the employer became increasingly concerned that although Ms. Jessen was trying hard, she was not mastering the technical aspects of her job or all of the job

responsibilities as a traffic coordinator quickly enough. The traffic coordinator position required the claimant to have a knowledge of Cable One and its business procedures and required the claimant to perform a multitude of duties each day.

On a number of occasions Ms. Ronfeldt had conversations with Ms. Jessen encouraging the claimant to find other employment because the claimant was not learning the multiple aspects of her job quickly enough. In turn, Ms. Jessen was unwilling to quit her job because she had left other employment to accept her position with Cable One, Inc. and needed to remain employed. As time further progressed, Ms. Ronfeldt became increasingly apprehensive that Ms. Jessen might have further performance difficulties during the 2014 business year because the year was a "political year" and duties would vastly escalate. Ms. Ronfeldt then began to explore with the company's corporate offices what criteria would be necessary to replace Ms. Jessen as an employee. Corporate responded that it would be necessary for the company to begin documenting reasons for terminating Ms. Jessen.

In September 2013, Ms. Harlow and or Ms. Ronfeldt met with claimant to discuss the need for the claimant to increase her productivity and minimize errors. Ms. Jessen continued to attempt to the best of her ability to master various job requirements of a traffic coordinator for the company. In addition to the claimant's current responsibilities, Ms. Harlow began preliminary training to teach the claimant to do "OOB's" (orders on books). A complicated procedure of adjusting company revenues in comparison to previous revenues.

On October 3, 2013, the claimant was asked if she was "ready to do OOB's?" The claimant had also been assigned scheduling duties that day and had only received minimal training on the OOB's. Ms. Jessen stated that she was not ready to do the OOB's that day citing the above-stated reasons.

Other employees had noticed that the claimant was being assigned to the OOB and the scheduling duties on the same day and told the claimant that the employer's practice had never been to assign both duties to one employee on the same day. An employee who had been regularly assigned to OOB duties also told the claimant that she had never been required to perform both duties on the same day because each duty was difficult and time consuming. On October 9, 2013, the claimant was issued a written warning for not meeting job requirement. The warning stated that the claimant must dramatically increase her level of productivity and the numerous aspects of her job in the traffic department and mandated that the claimant learn how to close a month out, be able to do month end reports and OOB's. The warning concluded that the claimant's failure to meet the skill requirements or for failure to follow procedures could result in her termination from employment. Based upon the circumstances, Ms. Jessen concluded that the employer was either attempting to force her to quit her employment or creating a reason to discharge her from employment. When Ms. Harlow renewed her question "so...are you going to do OOB's tomorrow?" Ms. Jessen responded that she was not. Whereupon the claimant was discharged from employment, the employer citing "insubordination" as the reason for her termination that day.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged for intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 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 insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 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." Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

In this matter the evidence establishes that the claimant was attempting to the best of her ability to master the duties associated the position of traffic coordinator for this employer. Because of concerns that the claimant was not learning quickly enough and that the claimant's lack of ability might further impact the employer in the next business year, the employer began to make plans

to replace Ms. Jessen in hopes of finding an employee who would be more competent. Ms. Jessen indicated that she would not quit employment because she needed to remain employed as she had left a previous job to accept the offer of Cable One, Inc. In response to Ms. Ronfeldt's inquiry, upper management suggested that the claimant could be discharged after sufficient documentation had been placed in the claimant's file in advance of the termination. The employer documented and discharged Ms. Jessen based upon her initial and subsequent refusal to perform a duty that she had not been adequately trained for and that had not been required of other employees who had been fully trained. Ms. Jessen was requested to perform the OOB duties on the same dates as scheduling duties were assigned to her. Based upon information provided to her by other employees including another employee who regularly did the OOB's, the claimant concluded that she was being treated in a manner that was not consistent with the way that other employees were being treated and refused to accept the disparate treatment. The claimant's refusal was reasonable under the attendant circumstances of this case and did not constitute disqualifying job misconduct. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated October 31, 2013, reference 01, is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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