

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MANEE MCKAY
Claimant

APPEAL NO: 11A-UI-12498-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

LF STAFFING SERVICES INC
Employer

**OC: 08-14-11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 6, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 17, 2011. The claimant participated in the hearing. Tracy Gutnecht, Branch Manager and Shannon Johnson, Branch Administrator, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issues are whether the claimant's appeal is timely and whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on September 6, 2011. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 16, 2011. The appeal was not filed until September 22, 2011, which is after the date noticed on the disqualification decision. The claimant originally faxed her appeal letter September 15, 2011, but it was not received by the Department. Because the claimant's original appeal was sent in a timely manner, the administrative law judge finds the appeal timely.

The claimant was employed as a part-time residential housekeeper for LF Staffing Services from March 26, 2010 to July 14, 2011. She was assigned to Connie's Cleaning off and on with her last assignment lasting from May 6, 2011 to July 15, 2011. The claimant was a no-call no-show July 12, 2011, and then made arrangements directly with Connie's Cleaning to work for her July 13, 2011, rather than going through the employer's service. Employees are paid daily if they finish their assignment before the employer closes for business for the day. The claimant worked three hours July 13, 2011. On July 14, 2011, she worked 9.75 hours and went in the morning of July 15, 2011, to collect her pay for July 14, 2011, and complain about her check for

July 13, 2011. When she entered the employer's premises around 7:30 a.m. July 15, 2011, Branch Manager Tracy Gutnecht was on the phone and the claimant threw her work ticket across the counter toward Ms. Gutnecht's desk, raised her voice and stated she "wanted (her) fucking money." Ms. Gutnecht asked what she was talking about and the claimant stated she should have been paid for four hours July 13, 2011. The claimant said she was guaranteed at least four hours of pay each time she worked and Ms. Gutnecht denied the claimant's statement while still on the phone. The employer does require clients to have a four hour minimum of work but does not guarantee employees four hours of pay if they do not work four hours. The claimant continued to claim she was owed money and repeatedly swore loudly, telling Ms. Gutnecht to "give (her) her fucking money." Ms. Gutnecht asked her to calm down, said she had paid her for the hours she worked and asked her to wait until she was off the phone but the claimant continued loudly talking and using profanity. When the claimant's behavior continued, Ms. Gutnecht paid her for the 9.75 hours she worked July 13, 2011, and told her their working relationship was over.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Regardless of whether the claimant thought her check was short by one hour, she had no right to storm into the office, raise her voice and swear at Ms. Gutnecht while she was on the phone, or any other time, with another employee and client present. The claimant's actions were inappropriate and unprofessional and the employer is not required to tolerate that type of behavior. Additionally, the claimant's check was not in fact short one hour as she had never been guaranteed a minimum of four hours work. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The September 6, 2011, reference 01, decision is affirmed. The claimant's appeal is timely. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs