

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANITA M GOLDEN

Claimant

APPEAL NO. 13A-UI-09822-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 08/04/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Advance Services, Inc. filed a timely appeal from a representative's decision dated August 23, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on September 30, 2013. Claimant participated. The employer participated by Mr. Michael Payne, Risk Manager and Ms. Stephanie Gursky, HR Coordinator. Employer's Exhibits One, Two, Three, Four, Five and Six were 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: Anita Golden was employed by Advance Services, Inc. from November 12, 2012 until July 30, 2013 when she was discharged from employment. Ms. Golden was assigned to work as a general laborer at the Pioneer Hybrid Company and was paid by the hour. Her immediate on-site supervisor was Stephanie Gursky.

The claimant was discharged on July 30, 2013 based upon an anonymous complaint that alleged that she had engaged in "horseplay" by attempting to squeak another employee off her feet by the use of her legs.

Based upon information provided by a representative of Pioneer Hybrid Company that an anonymous complaint had been received about Ms. Golden's conduct, a decision was made to terminate Ms. Golden from her employment with the employer's belief that the Pioneer Hybrid Company was credible when they made accusations against a worker and because of past credibility, the most recent assertions were considered to be valid. The Advance Services representative became more convinced that Ms. Golden had engaged in the prohibited horseplay because the claimant had asked if employee's time during the lunch hour was the employee's time or the company's time.

Ms. Golden had received a verbal warning along with other employees on July 17, 2013 about horseplay in the workplace and all employees were put on notice that future incidents would not be tolerated.

Ms. Golden denies engaging in any horseplay on or near July 30, 2013. The claimant asserts that she had only questioned her on-site supervisor about lunch time because the employer had referenced that the incident in question had taken place over the lunch hour. Ms. Golden denies engaging in any horseplay on her final day of employment and believes that the anonymous allegation against her was made by "Lorna", an individual who she had previously personally established as making false statements against her.

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 in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant a discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

Hearsay is admissible in administrative proceedings, although it cannot be accorded the same weight as sworn direct testimony providing that the sworn testimony is credible and not inherently improbable.

Inasmuch as the evidence in the record establishes that the employer relied upon anonymous hearsay evidence in support of its decision to terminate Ms. Golden for alleged conduct on July 30, 2013, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing disqualifying misconduct at the time of job separation. Ms. Golden participated personally and provided sworn testimony that she did not engage in prohibited conduct and testified that she had been subject to false accusation by a specific employee in the past and that she had identified that person to her lead person at the worksite as making false claims against the claimant. The administrative law judge notes the claimant's reference to whether it was an employee's time or the company's time over lunch hour is insufficient to establish that the claimant engaged in the prohibited conduct asserted by the employer in this matter.

While the decision to terminate Ms. Golden may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that the evidence in the record is not sufficient to warrant the denial of unemployment insurance benefits.

DECISION:

The representative's decision dated August 23, 2013, reference 01, is affirmed. The claimant was discharge under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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