

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

SALLY J KENDALL
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Appeal Number: 05A-UI-05248-DT
OC: 06/13/04 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:

Sally J. Kendall (claimant) appealed a representative's May 9, 2005 decision (reference 04) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from DeLong Sportswear, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on June 3, 2005. The claimant participated in the hearing and was represented by Michelle Swanstrom, attorney at law. Gail Anderson appeared on the employer's behalf and presented testimony from two other witnesses, Karen Hinote and Vicki Swinford. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 1, 2000. She worked full time as a sewer at the employer's Albia, Iowa jacket manufacturing business. Her last day of work was April 22, 2005. The employer discharged her on that date. The stated reason for the discharge was refusal to do assigned work.

The claimant was scheduled to report for work on April 22, 2005 at 7:30 a.m. When she arrived, there were some jackets at her workstation that she had worked on the prior day that needed some repairs. She took them to the workstation of the floor supervisor, Ms. Hinote, and left them there. When Ms. Hinote found they had been returned to her workstation, she took them back to the claimant and explained that these were the claimant's errors to be fixed. The claimant became upset and started yelling that if the employer would give her enough of her own regular work, she would not have to do work with which she was less familiar and make mistakes.

Ms. Hinote went to find Ms. Anderson, the plant manager, to report the matter to her. Ms. Anderson instructed Ms. Hinote to prepare a write-up for the claimant. The claimant then came into Ms. Anderson's office, shut the door loudly, and began discussing a personal issue with Ms. Anderson. The claimant was at least in part upset because she and Ms. Anderson had previously been friends, at least before Ms. Anderson became plant manager in November 2004. The claimant had also had a poor relationship with a prior manager. On April 21, 2005, there had been a company picnic at the plant that the claimant and Ms. Anderson had worked together on preparing. Ms. Anderson had invited the prior manager who did then attend; the claimant was upset and felt betrayed that Ms. Anderson had invited the prior manager. After further discussion, the claimant returned to her workstation.

Shortly thereafter, Ms. Anderson went to the claimant's workstation and saw that she was at that point not doing anything. She then asked the claimant if she was going to do the repair work. The claimant said, "I will, leave me alone." She did not move to begin the work, however, so Ms. Anderson asked again if she was going to do the repair work. The claimant again stated, "I will, leave me alone," and then got up and started walking toward the bathroom area. Ms. Anderson concluded that the claimant was disobeying her instruction, and indicated that the claimant should never mind, that she was fired. Ms. Anderson then walked toward Ms. Hinote's workstation, and the claimant followed. Ms. Anderson told Ms. Hinote not to bother with the write up, that the claimant was fired. Ms. Hinote saw no sign that the claimant was or had been crying.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-

connected misconduct. Iowa Code §96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code §96.5-2-a.

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's actions in not beginning to work when directed, particularly after her earlier overtly defiant behavior, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's May 9, 2005 decision (reference 04) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 22, 2005. This disqualification continues until the

claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

ld/tjc