

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARON E WISKIRCHEN
Claimant

APPEAL NO. 10A-UI-14871-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALANIZ LLC
Employer

**OC: 10/03/10
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's October 26, 2010 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing with her witness, Elias Ramirez. Mike Owens appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in February 2009. She worked as a full-time coordinator. The claimant understood the employer had an unwritten policy that did not allow employees to touch one another at work. The claimant and Ramirez had a personal relationship outside of work.

D.T., an employee the claimant supervised, reported to the production manager that before he went home Sunday morning, October 3, shortly after 3 a.m., he observed the claimant and Ramirez in an office "making out." J.W., another employee, verified that he noticed the claimant sitting in Ramirez's lap during that shift. However, J.W. did not work that shift.

After the employer received this report, the employer's video recorded that the claimant went into an office at 2:42 a.m. and did not leave until 3:04 a.m. On October 5, the employer talked to the claimant and asked her if anything had happened the morning of October 3. The claimant only indicated she had taken a 10-minute break in the office. The claimant denied she had done anything inappropriately with Ramirez. The claimant and Ramirez were in the office working – they reviewed schedules on the computer. They sat close to one another while working and looking at the computer, but the claimant did not sit on Ramirez's lap. They did not kiss at work.

Even though the claimant's job was not in jeopardy prior to October 3, the employer concluded she engaged in inappropriate conduct and discharged her on October 5, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's and Ramirez's testimony must be given more weight than the employer's reliance on hearsay information from employees who did not testify at the hearing. Based on a preponderance of credible evidence, the facts do not establish that the claimant engaged in any inappropriate conduct with Ramirez the morning of October 3, 2010. While the employer may have had justifiable business reasons for discharging the claimant, the evidence does not establish that she committed work-connected misconduct. As of October 3, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's October 26, 2010 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 3, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw