

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DESHAY L BELL
Claimant

APPEAL NO: 13A-UI-04749-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NATIONAL EMPLOYMENT SERVICE CORP
Employer

OC: 02/03/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 10, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The employer is an employment firm and assigned the claimant to work at HP. The claimant began working at HP in August or October 2012. She worked full time in the packing department. The claimant understood she had been or would soon be promoted. The claimant also understood she would be receiving a raise. During her assignment at HP, the claimant reported racist comments co-workers made.

When HP personnel no longer wanted the claimant working at their facility, the claimant understood someone had reported that the claimant made a racial comment. The claimant was not told what she allegedly said. The last day the claimant worked at HP was January 31, 2013.

The claimant understands the employer only assigns people to work at HP. The employer did not assign the claimant to another assignment.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer's client, HP, ended the claimant's assignment. While the client may have had justifiable business reasons for ending the claimant's employment at HP, the evidence does not establish that the claimant made a racist comment or violated any rules or policy. The employer did not establish that the claimant committed work-connected misconduct. Therefore, as of February 3, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's April 10, 2013 determination (reference 01) is reversed. The employer discharged the claimant, but the evidence does not establish that the claimant committed work-connected misconduct. As of February 3, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs