

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIKKI J KADNER
Claimant

APPEAL NO. 11O-UI-15275-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CATALYST MARKETING ENTERPRISES
Employer

**OC: 08/21/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Catalyst Marketing Enterprises filed a timely appeal from an unemployment insurance decision dated September 12, 2011, reference 01, that allowed benefits to Mikki J. Kadner. Notice was issued for a telephone hearing to be held October 10, 2011. The employer did not receive the notice. Unaware of this, an administrative law judge issued a decision in appeal 11A-UI-12160-DT allowing benefits to Ms. Kadner based upon the employer's failure to respond to the notice. The employer then filed an appeal with the Employment Appeal Board which, in an order dated November 28, 2011 remanded the case for further proceedings. After due notice was issued, a telephone hearing was held December 21, 2011 with Ms. Kadner participating. Human Resources Manager Kim Thorsen and Store Manager Chris Ergenbright participated for the employer. Employer Exhibit One was admitted into evidence.

ISSUES:

Was the separation a quit or a discharge?

Was the separation a disqualifying event?

FINDINGS OF FACT:

Mikki J. Kadner was a sales associate for Catalyst Marketing Enterprises from January 22, 2002 until she was discharged August 2, 2011. On August 1, 2011 Ms. Kadner received an email from Human Resources Manager Kim Thorsen asking that Ms. Kadner accept a change in her schedule that would interfere with another part-time job. Store Manager Chris Ergenbright knew of the other employment. Ms. Kadner requested additional time to consider the employer's proposal. On August 2, 2011, before Ms. Kadner had responded, Ms. Thorsen notified her by email that she was discharged.

REASONING AND CONCLUSIONS OF LAW:

The question is not whether the employer had just cause to discharge Ms. Kadner. Rather, the question is whether the reason for discharge constituted misconduct as that term is defined in Iowa law for unemployment insurance purposes.

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. See Iowa Code section 96.6-2. Disqualification following a discharge is appropriate if, and only if, the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8).

Given the circumstances, the administrative law judge finds that it was not misconduct for Ms. Kadner to have failed to respond to Ms. Thorsen's email within the time limit set by the employer. The employer's proposal amounted to an ultimatum that Ms. Kadner choose between existing employment with another employer and more hours of work from Catalyst Marketing Enterprises. A reasonable person would want time to reflect upon immediate impact on current earnings as well as long-term employment prospects. This is not to say that it was inappropriate for the employer to require the claimant to change her hours. Nevertheless, just cause for a discharge does not automatically translate into discharge for misconduct. Finding no misconduct, the administrative law judge concludes that no disqualification for unemployment insurance benefits may be required.

DECISION:

The unemployment insurance decision dated September 12, 2011, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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