

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FATIMA E SAEED
Claimant

APPEAL NO. 11A-UI-11849-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD'S INC
Employer

**OC: 07/24/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated September 2, 2011, reference 03, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on October 5, 2011. Claimant participated personally. Participating on behalf of the claimant was her attorney, Mr. Paul McAndrew. Participating on behalf of the employer was Mr. Andrew Niekrfz, Operations Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Fatima Saeed was employed by Dillard's, Inc. from January 19, 2007 until May 10, 2011 when she was discharged from employment. Ms. Saeed worked as a full-time children's shoe associate and was paid by the hour. Her immediate supervisor was Diane Willobe.

Ms. Saeed's last day on the job was February 10, 2011. The claimant had initially requested a personal leave of absence but subsequently requested a medical leave of absence and had been granted a 60-day medical leave of absence from the employer.

Ms. Saeed left the country because of the deaths of two family members. The claimant returned to the United States on April 6, 2011 and called Dillard's and attempted to speak to her supervisor at that time. When she was unable to reach Ms. Willobe the claimant left a message asking Ms. Willobe to call her back. Approximately two days later the claimant spoke to Ms. Willobe indicating her willingness to return to work but was referred to "Bonny." The claimant met with the management individual "Bonny" on approximately April 10, 2011 and was referred to Mr. Niekrfz. When the claimant met with the company's operations manager she was informed that she had been discharged because she was "late from her leave of absence."

It is the employer's position that the company was not aware of any contact made by Ms. Saeed after she left work on February 10, 2011 until she met with Mr. Niekrfz on May 10, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question for the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code § 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 § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the 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. of Appeals 1992).

In this matter the evidence is disputed. The claimant participated personally and provided sworn firsthand testimony testifying that she contacted representatives of Dillard's, Inc. within one day of returning from being out of the country and within the time frame allowed by her leave of absence. Claimant further testified that she was referred back and forth to various management individuals and ultimately informed that she was being discharged because she

had not returned timely from her leave of absence. The employer in contrast, relies primarily on hearsay evidence in support of its position that the claimant was discharged under disqualifying conditions.

While hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony. The administrative law judge finds the claimant to be a credible witness and finds that her testimony is not inherently improbable. Based upon the claimant's attempt to return within the time frame envisioned in the approved leave of absence, the administrative law judge concludes that the claimant did not engage in intentional, disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated September 2, 2011, reference 03, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs