

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROL L PETERS
Claimant

APPEAL NO: 14A-UI-06225-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TMONE LLC
Employer

OC: 09/15/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 13, 2014 (reference 04) that held she was discharged for misconduct on May 28, 2014 and benefits were denied. A telephone hearing was held on July 29, 2014. The claimant and her attorney, Eric Updegraff, participated. Lindsay Sinn, Employee Connections Manager, participated for the employer.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on March 17, 2014 and last worked for the employer as a full-time telephone account manager on May 28. The employer issued claimant a written coaching document on April 23. The employer write-up states claimant left her work area and had HR issues involving other persons that caused an unsafe work environment. There was no allegation of racism or use of profanity.

The employer Center Manager terminated claimant on May 28, 2014 for racism. Claimant was on the phone with a customer trying to make a sale. Some coworkers were causing a noisy disruption and claimant made attempts to quiet it down so she could do her job. When the disruption continued, claimant lost the customer sale. In frustration the claimant said she wished the “ghetto talk” would end.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The administrative law judge concludes employer failed to establish claimant was discharged for misconduct on May 28, 2014.

The employer representative admitted she was not prepared for the hearing. This representative did not have first-hand knowledge of claimant's conduct and the employer did not offer any written document as evidence. Claimant offered credible testimony she had some coworker issues, but denies she had been warned about using profanity or making racist comments.

While claimant made an ill-advised reference to "ghetto talk" in frustration, while having lost a customer sale, it is not sufficient to establish job disqualifying misconduct.

DECISION:

The department decision dated June 13, 2014 (reference 04) is reversed. The claimant was not discharged for misconduct on May 28, 2014. Benefits are allowed, provided claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/can