

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NANCY A ROBERSON
Claimant

APPEAL NO. 09A-UI-07648-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ORCHESTRATE MGMT VI
GATEWAY MARKET**
Employer

OC: 04/05/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant, Nancy Roberson, filed an appeal from a decision dated May 11, 2009, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on June 11, 2009 and concluded on June 29, 2009. The claimant participated on her own behalf. The employer, Gateway Market, participated by Human Resources Jeanine Buckingham and Controller Karen Harris. Ms. Buckingham did not participate in the June 29, 2009, continued hearing.

ISSUE:

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

FINDINGS OF FACT:

Nancy Roberson was employed by Gateway Market from June 17, 2008 until March 10, 2009 as a full-time deli supervisor. In October 2008 the claimant was warned about inappropriate conduct. Ms. Roberson had come to the store on her day off and “yelled” at a sous chef and “made a scene.”

On March 3, 2009, Ms. Buckingham received an anonymous call accusing Café Manager Josh Lawrence of sexual harassment. She notified President Paul Rottenberg and Director of Operations Jeremy Reichart of the call and said she would be talking with the managers and the employees about the allegations and would keep them informed. On the morning of March 4, 2009, Store Manager Ryan Hutchison called the human resources manager to report the claimant’s daughter, Chelsea, had come to him that morning very upset. Chelsea works in the café and reported that Ms. Roberson, her mother, had left her a note saying Mr. Lawrence was going to be fired for sexual harassment. Chelsea said she did not know what her mother was doing or how she would know anything about the café manager being fired. Ms. Buckingham called Chelsea and said she would meet with her that afternoon after the lunch rush to discuss her concerns.

Before the meeting with Chelsea, Ms. Roberson called Ms. Buckingham to accuse Mr. Hutchison of “yelling” at her daughter and upsetting her. At the meeting with Ms. Buckingham Chelsea denied Mr. Hutchison was yelling at her and upsetting her, she had only been upset and concerned because her mother had told her she was going to be fired. She also said her mother was “doing something” and she did not know what. She denied being sexually harassed by either Mr. Hutchison or Mr. Lawrence, or that she was being “singled out” for disciplinary action by management. She did not know of anyone in the store who was concerned about sexual harassment.

Ms. Buckingham reported to Mr. Rottenberg and Mr. Reichart and the director of operations decided he should meet with Ms. Roberson. The meeting occurred on March 6, 2009, as she had called in sick the day before. She was suspended pending investigation of the allegations she was making and those allegations made against her. Employees in the deli, the grocery store, cashiers, and café workers were interviewed. None of them had any concerns about or knowledge of sexual harassment by management.

At the March 6, 2009, meeting the claimant denied she had ever repeated any gossip of a sexual nature about Mr. Hutchinson, though she had gossiped about him dating some of the women he hired and then taking them off the schedule. She maintained she had gotten complaints from several of the women in the market and had told them to talk to the human resources office, but then would take it upon herself to make complaints on their behalf, even though she was not their supervisor.

It was discovered that on March 4, 2009, the claimant had gone to Controller Karen Harris “ranting and raving” about Mr. Hutchison, saying she would “take him down,” accusing him of not treating her fairly, she was taking notes, was consulting an attorney, accusing him of incompetence and harassment because the manager had admonished Chelsea for leaving her work station. In addition, the interviews with other employees revealed the claimant had consistently made remarks about Mr. Hutchison, accusing him of not knowing what he was doing, of hiring young women, having sex with them and then firing them.

The claimant was discharged by letter from Ms. Buckingham for inappropriate conduct.

REASONING AND CONCLUSIONS OF LAW:

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 claimant denied most of the allegations against her, but the employer has first hand testimony which rebutted that denial. Although Ms. Roberson seemed to have, to her, a reasonable explanation for her conduct, it does not bear close scrutiny. She took it upon herself to complain on behalf of other employees when she was not their supervisor. She made threats to "take down" the manager because he had been "yelling" at her daughter, though this was not the case. The claimant jumped to erroneous conclusions as evidenced by her leaving a note for her daughter that an assistant manager was being fired for sexual harassment, based on nothing at all except a passing comment from the store manager.

After having made these erroneous assumptions, the claimant was not at all reluctant to repeat them to co-workers and management. Ms. Roberson's conduct was disruptive to the work place, causing distress to employees and managers alike with unfounded allegations and accusations. Her conduct resulted in dissention in the work place and the unwarranted spread of groundless rumors. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and is conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of May 11, 2009, reference 01, is affirmed. Nancy Roberson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs

