

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LATORYA S JORDAN
Claimant

APPEAL NO. 07A-UI-03309-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

J & M PARTNERSHIP
Employer

OC: 03/04/07 R: 03
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 22, 2007, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on April 17, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Terri Torres participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a crewperson for the employer from June 8, 2005, to March 1, 2007. She was discharged on March 3, 2007, for being absent from work on March 2, 2007, and for unsatisfactory work performance, violation of the uniform policy, and displaying a negative attitude.

On January 30, 2007, the claimant received a warning for arguing with a manager and for not wearing a visor or a hat. Although the employer claimed there were continuing problems with negative attitude, violations of the uniform policy, and attendance after January 30, 2007, there is no evidence of this.

The reason why the claimant missed work on March 2, 2007 was because she did not believe she was scheduled to work that day.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. The employer's witness, Terri Torres presented no specific evidence about any conduct after January 30, 2007, and did not even mention the claimant's absence on March 2, when she was asked why the claimant was discharged. Yet, it is clear the absence on March 2 was the triggering event for the discharge. The claimant's testimony that she was unaware that she was scheduled on March 2 is credible. Therefore, no current act of willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated March 22, 2007, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs