

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY K NORTHCUTT

Claimant

APPEAL NO. 06A-UI-11487-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TOYOTA MOTOR CREDIT CORPORATION

Employer

**OC: 10/22/06 R: 03
Claimant: Respondent (2)**

Section 96.5-2a – Discharge
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

Toyota Motor Credit Corporation filed a timely appeal from an unemployment insurance decision dated November 20, 2006, reference 01, that allowed benefits to Kimberly K. Northcutt. After due notice was issued, a telephone hearing was held December 18, 2006 with Ms. Northcutt participating. Human Resources Generalist Jodie Driscoll participated for the employer. Employer Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Kimberly K. Northcutt was employed by Toyota Motor Credit Corporation from September 14, 1998 until she was discharged October 27, 2006. She worked as an ICU clerk.

The incident leading to discharge occurred on October 20, 2006. In a conversation with another employee, both Ms. Northcutt and the other employee referred to Brazil nuts as “nigger toes.” This term offended other coworkers who overheard the conversation. Human Resources Generalist Jodie Driscoll learned of the complaint on October 23, 2006. After preliminary investigation, the company placed Ms. Northcutt on paid administrative leave on October 24, 2006. She was discharged on October 27, 2006. On May 20, 2003 Ms. Northcutt had signed an acknowledgement stating that she could be discharged for using inappropriate language with customers, dealers, vendors or coworkers or where such comments were undirected but audible in the workforce. Ms. Northcutt has received unemployment insurance benefits since filing a claim effective October 22, 2006.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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.

In testimony Ms. Northcutt acknowledged the statement attributed to her. She also acknowledged that someone could be offended by the comment. She did not contradict the employer's testimony or documentary evidence. She raised a claim that after her discharge another employee was merely suspended for making an uncomplimentary though nonracial comment about a waitress at a company gathering. The administrative law judge does not consider that the situations were equivalent. Benefits must be withheld.

Ms. Northcutt has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

DECISION:

The unemployment insurance decision dated November 20, 2006, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured

work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$1,735.00.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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