

due to an intimidating and hostile work environment created by claimant talking about staff with other stylists and passing along confidential information about employees. Claimant denied the allegations, but Melissa Cauldwell quit on July 27, 2005 and returned to work the week after claimant was fired. Cauldwell and Beth complained to Sarah Cargo that, shortly after the salon opened and they closed the salon early on one occasion, claimant told Beth that Cargo was angry at her but told Cauldwell the salon was fined \$5,000.00. Later claimant admitted she said that to scare them. Claimant told Cauldwell's fiance's uncle she was going to fire her because she went home with a rash. Claimant did not like Beth and Cauldwell and pitted them against each other and attempted to "make everything a competition." When Cauldwell's sales approached that of claimant, her hours were cut to 20 per week. Cauldwell also complained to Cargo that claimant allowed her children into the salon and let them do whatever they wanted to do. At one point claimant's boyfriend came into the salon and started an argument with Cauldwell. Cauldwell told claimant she quit because she "did not get paid enough to put up with the drama that went on in here."

Tara Copeland quit on August 26, 2005 and returned to work in mid-November 2005. Allison Dredge was on maternity leave and intended to quit, but Cargo talked her out of it, after Dredge's mother was in the salon and, while Dredge was in the back room, claimant told her corporate said it thought Dredge "would be the first to go." Dredge was also aware claimant played favorites and said she did not like stylist Denise and would "figure out a way to get rid of her."

Cargo warned claimant on May 24, 2005 not to bring up problems with employees among their coworkers. Claimant had intentionally and improperly advised stylists they could not call Cargo without going through claimant first.

The claimant has received unemployment benefits since filing a claim with an effective date of September 18, 2005.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

Claimant attempted to turn subordinate employees against each other, violated personnel confidences, retaliated by cutting hours for competitive sales, blatantly lied to customers and stylists, and generally contributed to a hostile and intolerable working environment to the degree that several stylists quit and did not return to work while claimant was employed. Her actions, after having been warned, constitute disqualifying misconduct and violated common reasonable standards of professional behavior, especially from a management perspective. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The October 6, 2005, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,008.00.

dml/kjw