

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRYSTAL L MUTH
Claimant

APPEAL NO. 11A-UI-11580-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMW GROSCOPP INC
Employer

**OC: 07/31/11
Claimant: Appellant (1)**

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 August 23, 2011, reference 01, that held she was discharged for misconduct on August 1, 2011, and which denied benefits. A telephone hearing was held on September 27, 2011. The claimant participated. Connie Vander Ploeg, administrative VP, and Jack Bradshaw, manufacturing manager, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment as a full-time line worker on September 5, 2006, and last worked as a full-time line leader for the employer on August 1, 2011. The employer has a policy that an employee may be disciplined for unacceptable conduct, which includes creating a hostile work environment up to and including termination.

During a performance review while claimant was working a line position, she was disciplined for her attitude and conduct toward co-workers. On July 27, the employer received a complaint that claimant had posted derogatory comments about her employment and line workers on her Facebook page. The complaint contained the Facebook page comments that specifically identified the employer/work place with statements: “about keeping your mouth shut, give a shit, and pull your head out of your ass.” Two line worker employees made responses to these comments.

The employer suspended claimant on July 27 after reviewing the initial complaint and it conducted an investigation. Claimant was called into work on August 1 for a meeting with employer representatives. The employer had a serious question as to whether she could return to a leader position, as she was considered a mentor who directed other employee work. When claimant responded to the employer inquiry that she would just do her job and ignore other

employees, she was terminated. The employer concluded claimant had not learned from her previous performance evaluation discipline, and the current incident, such that she could be expected to continue the same behavior in the future.

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on August 1, 2011, for a repeated violation of company policy due to a pattern of unacceptable behavior.

The claimant knew the employer's conduct policy due to a prior discipline in her performance evaluation. Her Facebook comments identified the employer and she knowingly shared them with employees. Those comments constitute a violation of the employer's unacceptable conduct policy and create a hostile work environment. Her response to the suspension demonstrates a future disregard of a standard of behavior that the employer has a right to expect and constitutes job-disqualifying misconduct.

DECISION:

The department decision dated August 23, 2011, reference 01, is affirmed. The claimant was discharged for misconduct on August 1, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw