

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBEKAH J SMITH
Claimant

APPEAL NO. 09A-UI-14598-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

K-MART
Employer

**Original Claim: 9/06/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 28, 2009, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on October 27, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Dean Habhab participated in the hearing on behalf of the employer with a witness, Teresa Berry. Exhibits One through Seven were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a replenishment associate from April 28, 2008, to September 10, 2009. The claimant had received warnings as follows: June 24, 2008—productivity and unresponsiveness problems; July 12, 2008—productivity and unresponsiveness problems; August 11, 2008—productivity and attendance problems; February 18, 2009—attendance problems; and July 15, 2009—productivity, unresponsiveness, belligerent behavior, and hygiene problems.

On August 14, 2009, the claimant was issued a final written warning after she got angry, threw a box knife down, and kicked some objects.

The claimant has received assistance from a job coach by a human services agency in the past in performing her job because she suffers from a mental disability. In mid-August 2009, the claimant rejected the employer's suggestion that she bring in a job coach to assist her because she believed she was going to be assigned a job coach who had yelled at her in the past. The claimant also had experienced hip problems that caused her to be off work from July 28 to August 1, 2009. Although she was released back to work without restrictions, she continued to have problems with pain in her hip that slowed her work speed.

When the claimant was only about to complete 11 cases per hour instead of the expected 20 cases per hour and did not full stock the shelves, she was discharged for poor work performance and productivity.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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, no current act of work-connected misconduct as defined by the unemployment insurance law has been established. The final reason for the claimant's discharge amounts to inefficiency, unsatisfactory conduct, or failure in good performance due to inability. No willful and substantial misconduct has been proven in this case. I believe the claimant's testimony that her productivity was affected by hip pain.

DECISION:

The unemployment insurance decision dated September 28, 2009, 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/kjw