

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GRACE M TOOSON
Claimant

APPEAL NO. 07A-UI-06190-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOSTON WINDOW CLEANING INC
Employer

**OC: 05/20/07 R: 03
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Grace Tooson filed an appeal from a representative's decision dated June 15, 2007, reference 01, which denied benefits based on her separation from Boston Window Cleaning, Inc. After due notice was issued, a hearing was held by telephone on August 8, 2007. The employer participated by Francie Hannon, Supervisor, and was represented by Miriam Arugette of Personnel Planners, Inc.

Ms. Tooson was on the line for the bulk of the hearing. She was using a cell phone from work and became disconnected at some points. The administrative law judge was able to reconnect her on all occasions except for the last. After the last occasion on which she was dropped, the administrative law judge made two attempts to reach her but only got voice mail. Ms. Tooson has not contacted the Appeals Bureau since that time.

ISSUE:

At issue in this matter is whether Ms. Tooson was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Tooson began working for Boston Window Cleaning, Inc. in late February of 2007 as a full-time janitor. She was discharged prior to completing her 90-day probationary period. On May 23, Ms. Tooson was told by her supervisor that there were areas she missed or had not cleaned adequately. Ms. Tooson then commented, "You're always on my ass." One other employee was present at the time. Ms. Tooson was allowed to complete her shift on May 23 and was discharged on May 24.

When she was initially placed in her assignment, Ms. Tooson was given eight hours per shift to complete the work. At a later point, it was reduced to six hours. She did not always finish her required duties in the time allotted. She did not always vacuum adequately and sometimes left garbage. The supervisor brought these deficiencies to her attention and told her to make sure she completed those tasks the following day. When questioned, Ms. Tooson indicated that she did not have time to complete her duties. She had not received any written warnings advising that her job was in jeopardy. She had been verbally warned that she needed to complete her work.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The evidence must establish that the discharge was prompted by a current act that constituted misconduct within the meaning of the law. See 871 IAC 24.32(8). In the case at hand, the decision to discharge Ms. Tooson was triggered by the statement she made to the supervisor on May 23 to the effect that the supervisor was always “on her ass.”

Ms. Tooson’s statement on May 23 was not used in a confrontational context or during an argument with the supervisor. The administrative law judge is inclined to view the statement as a minor peccadillo rather than intentional misconduct. She did not have a history of inappropriate language at work. Ms. Tooson’s discharge was also based on her job performance. The administrative law judge does not doubt the employer’s testimony that Ms. Tooson did not always complete her job duties. The reason she gave the employer was lack of time.

The employer did not provide documentation concerning Ms. Tooson’s job performance. The employer presented no records to establish when she failed to complete her duties or when she performed them inadequately. Although the employer established that Ms. Tooson was negligent in not performing all of her duties, the evidence did not establish that the negligence was so recurrent as to manifest a substantial disregard of the employer’s interests or standards. The employer established that Ms. Tooson was an unsatisfactory employee. However, the employer failed to establish substantial misconduct as is required for a disqualification from benefits. See Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

While the employer may have had good cause to discharge Ms. Tooson, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative’s decision dated June 15, 2007, reference 01, is hereby reversed. Ms. Tooson was discharged, but disqualifying misconduct has not been established by the evidence. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw