

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TAMMIE J SIEREN-MILLIZER
829 W MADISON
CENTERVILLE IA 52544

WORLD PRINTING COMPANY
STAR PRINTING COMPANY
ATTN BARRY E LOWTHORP
506 W LOWELL AVE
SHENANDOAH IA 51601

Appeal Number: 05A-UI-12122-CT
OC: 10/30/05 R: 03
Claimant: Respondent (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct
Section 96.6(2) – Timeliness of Protests

STATEMENT OF THE CASE:

Star Printing Company filed an appeal from a representative's decision dated November 22, 2005, reference 01, which held that the protest to Tammie Sieren-Millizer's claim had not been timely filed. After due notice was issued, a hearing was held by telephone on December 15, 2005. Ms. Sieren-Millizer participated personally. The employer participated by Barry Lowthorp, Owner.

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. Sieren-Millizer filed a claim for job insurance

benefits effective October 30, 2005. Notice of the claim was mailed to the employer at its address of record on November 2, 2005. Barry Lowthorp was out of town beginning November 3 and returned on November 17. In his absence, only two employees were at the location to which the notice of claim was mailed. One of those individuals works in production and does not handle the mail. The other individual works in production, answers the telephone, and places all in-coming mail on Mr. Lowthorp's desk. He discovered the notice of claim upon his return on November 17 and filed a protest by fax on November 18, 2005.

Ms. Sieren-Millizer began working for Star Printing on September 7, 2004. She was hired to work approximately 15 hours per week as an office manager and as a sales representative. On November 1, 2005, she had a conversation with the owner regarding her commissions. She was reminded that she had not been collecting 50 percent of costs on new accounts. She was also told that she was not making additional sales as expected by the employer. Mr. Lowthorp told her it was time to start looking for a different job. When Ms. Sieren-Millizer indicated her belief that she was being fired, there was no response. Believing she had been fired, Ms. Sieren-Millizer collected her personal belongings and left the office. On the following day, she contacted the head office and spoke with Nancy. She told Nancy to advise Mr. Lowthorp that she felt she had been fired and that she was leaving the key. She did not receive any calls in response to her message. Ms. Sieren-Millizer had not been advised that she was in danger of losing her job.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether the employer's protest should be considered timely filed as required by Iowa Code section 96.6(2). The employer was out of town when the notice of Ms. Sieren-Millizer's claim was received and remained out of town through its due date of November 14. During the interim, there was no one at the employer's place of business that had the authority to open and respond to the notice of claim. The employer acted with due diligence in filing the protest on November 18 after discovering the notice of claim when he returned to town on November 17. For the above reasons, the administrative law judge concludes that the protest filed by fax on November 18, 2005 shall be deemed timely filed. Therefore, the administrative law judge has jurisdiction over the separation issue.

The next issue in this matter is whether Ms. Sieren-Millizer was separated from employment for any disqualifying reason. The parties disagree as to whether the separation was a quit or a discharge. Ms. Sieren-Millizer testified that she was told it was time to start looking for a different job. The administrative law judge believes a reasonable person would construe this as a statement of discharge. The employer testified that she was told she should start looking for another job if she could not perform to the employer's expectations. There was room for a misunderstanding of Mr. Lowthorp's statement. Any misunderstanding could have been cleared up after Ms. Sieren-Millizer's conversation with Nancy on November 2 in which she indicated her belief that she had been fired by Mr. Lowthorp on November 1. If that was not the case, the employer had the opportunity to so advise Ms. Sieren-Millizer. Since she was not told anything different, she had good reason to believe that she had, in fact, been fired. Inasmuch as the employer failed to correct any misunderstanding on Ms. Sieren-Millizer's part, it is concluded that the employer initiated the separation. Therefore, it is considered a discharge.

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 administrative law judge does not doubt that the employer had

problems with Ms. Sieren-Millizer's job performance. However, she had not been put on notice that she was engaging in conduct that might lead to her discharge. Therefore, she was deprived of a reasonable opportunity to make those changes necessary to retain her employment. Those matters discovered by the employer after the separation cannot be considered by the administrative law judge, as they clearly could not have formed the basis of the decision to discharge. For the reasons stated herein, the administrative law judge concludes that the employer has failed to satisfy its burden of proving disqualifying misconduct. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated November 22, 2005, reference 01, is hereby modified. The employer filed a timely protest to the claim. Ms. Sieren-Millizer was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjw