

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BIANCA M BOLDEN
Claimant

APPEAL NO. 07A-UI-02006-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEAVER ENTERPRISES LTD
Employer

**OC: 09/17/06 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
Section 96.7-2-a(2) – Charges Against Employer’s Account

STATEMENT OF THE CASE:

Weaver Enterprises, Ltd. (employer) appealed a representative’s February 16, 2007 decision (reference 05) that concluded Bianca M. Bolden (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on March 13, 2007. The claimant participated in the hearing. Terry Moffit appeared on the employer’s behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for work-connected misconduct? Is the employer’s account subject to charge?

FINDINGS OF FACT:

The claimant started working for the employer on October 23, 2006. She worked part-time (10 to 15 hours per week) as a team member/cashier in the employer’s Mason City, Iowa, Kentucky Fried Chicken restaurant. Her last day of work was January 19, 2007. The employer discharged her on January 20, 2007. The reason asserted for the discharge was missing a mandatory meeting.

On or about January 15, the employer posted a sign and informed the employees including the claimant that they were to attend a mandatory staff meeting at 8:00 a.m. on Saturday, January 20. The claimant was scheduled to work a shift that day beginning at 11:00 a.m. On the afternoon or evening of January 19 the claimant called the restaurant and spoke to the assistant manager. She told him that her husband had just been taken to jail and that she had no other transportation to get to the meeting at 8:00 a.m. The assistant manager indicated that it would be "okay" for her to miss the meeting.

Eight of the employer's 20 employees at the site missed the meeting, and six of those who missed, which would include the claimant, were discharged for not being excused from attending the meeting. The claimant did arrange other transportation with another family member in time to get to work at 11:00 a.m., but when she arrived she was told she had been discharged for missing the meeting.

The claimant established an unemployment insurance benefit year effective September 17, 2007. She reopened the claim with the filing of an additional claim effective January 28, 2007.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

Iowa Code § 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).

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer’s interest, or
 2. The employee’s duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is missing the mandatory meeting on January 20, 2007. Misconduct connotes volition and intent. Huntoon, supra. The claimant believed in good faith that her attendance at the meeting had been excused by the assistant manager; therefore, her missing the meeting was at worst a good faith error in judgment or discretion and was not substantial misbehavior. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

The final issue is whether the employer’s account is subject to charge. An employer’s account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is “the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual’s benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim.” Iowa Code § 96.19-3. The claimant’s base period began April 1, 2005 and ended March 31, 2006. The employer did not employ the claimant during this time and, therefore, the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative’s February 16, 2007 decision (reference 05) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive

unemployment insurance benefits, if she is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css