

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA B JONES

Claimant

APPEAL NO: 09A-UI-09843-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY SERVICES

Employer

OC: 05/24/09

Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Per Mar Security Services (employer) appealed a representative's June 29, 2009 decision (reference 01) that concluded Amanda B. Jones (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 27, 2009. The claimant participated in the hearing. The employer responded to the hearing notice and provided a phone number to contact the employer's witness. The phone number was called, but the person answering the phone indicated the witness was not available at that number and did not have a number to contact the witness. The employer's witness did not contact the Appeals Section when the administrative law judge could not reach the witness. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 2008. The claimant worked as a full-time security guard. M.C. supervised the claimant. When the claimant started working, she received a copy of the employer's harassment policy. If the claimant had a harassment complaint, she understood she was to report this to M.C.

After the claimant returned to work from her maternity leave, a co-worker criticized her about the way she took care of her infant daughter to the point that the claimant felt the co-worker was harassing her. Other employees felt harassed by this co-worker also. In early May 2009, the claimant and three other employees complained to M.C. about the way a co-worker harassed of them. M.C. made the comment that if someone did not like this, they could leave.

Even though M.C. made the comment about leaving, the claimant waited about a week to see if he would investigate or follow-up on her complaint. When M.C. appeared to take no action, the claimant went to her supervisor and told him about the co-worker's harassing treatment toward

the claimant. The supervisor indicated he would look into the matter after he returned from a conference or meeting. On May 21, or about a week later, M.C. told the claimant after she had reported to work she was discharged for failing to follow the chain of command. The claimant understood she had followed the correct chain of command when she reported a co-worker's harassment. When she talked to M.C.'s supervisor, he did not indicate she should have gone to someone else to report the harassing treatment by a co-worker.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had justifiable business reasons for discharging the claimant. Since the employer did not participate in the hearing, the facts do not establish how the claimant failed to follow the chain of command. The evidence does not indicate how the claimant intentionally disregarded the employer's interests. As a result, the evidence does not establish that the claimant committed work-connected misconduct. As of May 24, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's June 29, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of May 24, 2009, the claimant is qualified to receive benefits, provided she meets all other

eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css