

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

KATHLEEN HILL
1215 –16½ ST
BETTENDORF IA 52722

MIDAMERICAN ENERGY CO
ATTN SHELLEY R TURNER
PO BOX 657
DES MOINES IA 50303-0657

Appeal Number: 04A-UI-03679-RT
OC: 02-29-04 R: 04
Claimant: Respondent (2)

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 96.5-1 – Voluntary Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, MidAmerican Energy Company, filed a timely appeal from an unemployment insurance decision dated March 22, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Kathleen Hill. After due notice was issued, a telephone hearing was held on April 26, 2004, with the claimant participating. Carrie Meumann, Supervisor, and Richard Baltazor, Employee Labor Relations Representative, participated in the hearing for the employer. Shelly Turner, Labor Relations Coordinator, was available to testify for the employer but not called because her testimony would have been repetitive and unnecessary. Employer's

Exhibits 1 and 2 were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits 1 and 2, the administrative law judge finds: The claimant was employed by the employer as a full-time customer service associate from July 28, 1999 until she separated from her employment on March 3, 2004. At that time, the claimant was forced to quit or be discharged. The claimant had written an earlier written resignation on that day but it was unacceptable to the employer and a second letter of resignation was written by the claimant which appears at Employer's Exhibit 1 which was dictated to the claimant by the employer and the claimant signed the same. If the claimant had not resigned she would have been discharged. The claimant was forced to resign or be discharged because of violations of the employer's policies concerning confidential information and the use of the employer's computer. In the last four months of the claimant's employment she accessed a customer's computer records and account six times without a business related reason. The claimant was engaged in a personal legal dispute with the customer and she accessed the account to gain information to assist her in the legal dispute. The last occasion that she did so was on February 27, 2004. Her employer has very specific rules about this behavior as shown at Employer's Exhibit 2: on page 7, the employer has a clear conflict of interest rule; on page 8, a rule providing for honesty and truthfulness; and on page 10, a confidentiality rule concerning confidentiality, and further using the employer's computer to obtain information improperly including use of the computer adverse to the interest of the employer. The claimant received a copy of these rules and was aware of the rules and was further aware that her conduct in accessing the confidential information was a violation of the employer's policies. The matter came to light when the claimant called and left a message for the customer and the customer called the employer very upset. The claimant was confronted by her supervisor, Carrie Meumann, one of the employer's witnesses, on February 27, 2004 and denied accessing such information but on March 1, 2004 the claimant admitted doing so and further admitted that it was wrong and finally at a pre-disciplinary hearing on March 3, 2004 the claimant again admitted that she had lied to Ms. Meumann earlier, that she was aware of the employer's policies and that what she was doing was wrong and had been done for personal reasons because she was in a personal and private legal dispute with the customer. The claimant had not been accused of this behavior before nor had she received any warnings or disciplines and there was no other reason for her discharge. Pursuant to her claim for unemployment insurance benefits filed effective February 29, 2004, the claimant has received unemployment insurance benefits in the amount of \$1,783.00 as follows: \$228.00 for benefit week ending March 6, 2004 (earnings \$160.00) and \$311.00 per week for five weeks from benefit week ending March 13, 2004 to benefit week ending April 10, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

Iowa Code Section 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 administrative law judge concludes that the claimant did resign but that she was compelled to resign when given the choice of resigning or being discharged. All of the parties concede this. This is not considered a voluntary leaving but is in the nature of a discharge and disqualifying misconduct must be determined. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge or a forced resignation, the claimant must have been discharged or forced to resign because of disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was forced to resign because of disqualifying misconduct. There is little fact in dispute. On six different occasions in the last four months of the claimant's employment, she accessed confidential computer records of a customer for personal reasons unrelated to her employment. The claimant was in a personal legal dispute with this customer and was getting personal information about that customer to use in her legal dispute. The employer has specific policies prohibiting such use as set out in Employer's Exhibit 2 and the claimant testified that she was aware of these policies and further aware that what she was doing was wrong on each occasion when she accessed this information. Further, when confronted by the employer after the employer learned from the customer of the claimant's access, the claimant denied accessing the information. Thereafter, the claimant admitted the offenses and was discharged. Because of the employer's policies related to this behavior and the claimant's awareness of those policies and further aware on each occasion that what she was doing was wrong, the administrative law judge is constrained to conclude that claimant's behavior here were deliberate acts or omissions constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evince a willful or wanton disregard of the employer's interests and at the very least are carelessness or negligence in such a degree of recurrence all as to establish disqualifying misconduct. The administrative law judge notes that confidential information in this age is extremely important and the claimant was aware of the employer's policies but nevertheless violated them. It appears to the administrative law judge that this came to light by further actions of the claimant but the administrative law judge does not believe that this excuses her behavior. The administrative law judge notes that when first confronted about this the claimant denied her acts and then later admitted to them.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,783.00 following her separation from her employer on or about March 3, 2004 and filing for such benefits effective February 29, 2004, to which she is not entitled and for which she is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of March 22, 2004, reference 01, is reversed. The claimant, Kathleen Hill, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits, because she was forced to resign for disqualifying misconduct. The claimant is overpaid unemployment insurance benefits in the amount of \$1,783.00.

tjc/b