

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIDGETTA CRAYTON
Claimant

APPEAL NO. 06A-UI-10617-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING
Employer

**OC: 10/01/06 R: 04
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Access Direct, filed an appeal from a decision dated October 23, 2006, reference 03. The decision allowed benefits to the claimant, Bridgetta Crayton. After due notice was issued a hearing was held by telephone conference call on November 27, 2006. The claimant participated on her own behalf. The employer participated by Team Manager Adam Sutton and was represented by TALX in the person of Jessica Meyer.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Bridgetta Crayton was employed by Access Direct from August 29, 2005 until September 30, 2006. She was a full-time telephone service representative. At the time of hire she received a copy of the employee handbook. One of the provisions requires employees to maintain a “safe, efficient and pleasant” workplace.

On September 30, 2006, the claimant set off a stink bomb in a wastebasket approximately 30 feet from her workstation. She was confronted about it by Team Manager Adam Sutton and she admitted to it. He asked her if she had any other and she stated she did and surrendered it to him at his request.

Mr. Sutton notified Program Manager Renee Harmon, who consulted with the corporate human resources department. The decision was made to discharge her for violation of the policy. Ms. Crayton has received unemployment benefits since filing a claim with an effective date of October 1, 2006.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant may have felt she was only "joking" when she set off a stink bomb in the work place, but this was an intentional act meant to disrupt the workplace and annoy her co-workers. Ms. Crayton admitted to the incident but defended herself on the basis of another co-worker having sprayed perfume in the work area some months prior and a manager burning some popcorn. However, there is no evidence either of these events were done with the intention of annoying co-workers and disrupting the workplace. Ms. Crayton's actions did violate the provisions of the company policy. It is conduct not in the best interests of the employer and she is disqualified.

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 claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of October 23, 2006, reference 03, is reversed. Bridgetta Crayton is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,666.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw