

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GERI MCGARR
Claimant

APPEAL NO. 09A-UI-09638-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CDS GLOBAL INC
Employer

**Original Claim: 05-10-09
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 29, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 22, 2009. The claimant participated in the hearing. The employer participated through Linda Burns, Senior Employee Relations Specialist; Mike Dubberke, Director of Enterprise Data Solutions; Janese Fitzgerald, Production Support Manager; and Chris Croat, Senior Employee Relations Specialist. Employer's Exhibits One through Five and Claimant's Exhibit A were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time account specialist for CDS Global from March 5, 1975 through May 14, 2009, when she was discharged for insubordination. She was involved in a meeting with Mike Dubberke, Maurene Schimmel, and Janese Fitzgerald in which the company's reorganization was discussed. As part of that reorganization, the claimant was told she would begin to report to Ms. Fitzgerald. The claimant responded with, "No, oh no" and turned to Ms. Fitzgerald and said in a raised voice, "I hate you. I have never liked you." The claimant then turned to Mr. Dubberke and said, "She is a bitch and I will never work for her!" Mr. Dubberke told the claimant he was not aware of the details of what caused her to dislike Ms. Fitzgerald and the claimant responded that "she bit my head off." She went on to add that she did not want to talk to or look at Ms. Fitzgerald. The claimant said she would not even be in the same room with Ms. Fitzgerald without human resources or another disinterested party being present. Before leaving the meeting, she said she knew she was inappropriate and was probably going to lose her job over this. She was not fired immediately, due to the length of time she had been employed. The claimant never apologized, was not remorseful, but rather further demonstrated her intent not to follow the employer's directives. She sent an email to Linda Burns May 11, 2009, stating that she would not change her mind about Ms. Fitzgerald:

“Just so you are under no delusions. There will be no discussion with Janese. Nothing that can be said or done will change my mind.” The claimant wrote an additional email that stated, “Linda, I am going to be nasty to her. I won’t be able to help myself. My mouth is going to override the good sence (sic) my head is trying to tell me.” Another staff meeting was scheduled for May 13, 2009, and the claimant wrote Ms. Fitzgerald and stated, “I am not going to be rational by that time so it will not be possible for me to explain anything.” At the meeting May 12, 2009, Ms. Burns asked the claimant if she had any regrets for her outburst May 6, 2009. The claimant smiled and said that she felt liberated. She added that she had no intention of trying to work with Ms. Fitzgerald. She would continue to come to work but would not change her behavior, until such time as the employer terminated her. Ms. Burns told the claimant her that her continued disrespect, inappropriate behavior and uncooperative attitude were creating a self-termination. The claimant’s open hostility would infringe upon Ms. Fitzgerald’s ability to manage the team, as well as the employer’s ability to direct its employees. The claimant was subsequently discharged.

The claimant filed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related misconduct.

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 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 claimant was discharged for insubordination. She refused to allow the employer to organize its employees how it wanted. The claimant was blatantly disrespectful to her manager and demonstrated she would continue in that manner until she was terminated. Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of her employer. Myers v. IDJS, 373 N.W.2d 507 (Iowa 1983). The claimant's conduct shows a wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The June 29, 2009, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw