

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JILLIAN M HARRINGTON**  
Claimant

**APPEAL NO. 11A-UI-08170-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COSTCO WHOLESALE CORPORATION**  
Employer

**OC: 05/15/11**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Costco Wholesale Corporation (employer) appealed a representative's June 8, 2011 decision (reference 01) that concluded Jillian M. Harrington (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 July 14, 2011. The claimant participated in the hearing and presented testimony from one other witness, Tom Stevens. Mike Mineter appeared on the employer's behalf and presented testimony from one other witness, Preston Helms. 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.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on August 23, 2008. Since about August 2010, she worked full-time as a membership assistant in the employer's West Des Moines, Iowa store. Her last day of work was May 11, 2011. The employer suspended her that day and discharged her on May 17, 2011. The reason asserted for the discharge was spreading malicious gossip.

About a week prior to May 9 the claimant had overheard another employee saying that a coworker "L" was claiming that another employee "M" had sexually harassed her. On May 9 the claimant was speaking with yet another employee "S." The claimant commented to "S" about the blouse "L" was wearing and then repeated what she had heard about "L" claiming "M" had sexually harassed her. Yet another employee, "T," was close enough to overhear what the claimant said to "S." Word of what the claimant had said to "S" got back to "M," and a complaint was made to management. Management determined there was no bona fide complaint of sexual harassment by "L" about "M," and when the claimant acknowledged that she had repeated the rumor, the employer initially suspended and then discharged the claimant.

Not all reports of spreading rumors automatically result in discharge of the employee. The claimant's situation was deemed somewhat different because on March 24, 2009 she had been given a warning for speaking to other witnesses on a sexual harassment complaint after being told not to discuss it with anyone; in that matter, the claimant was the complainant.

#### **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).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her repeating gossip regarding the possible sexual harassment complaint on May 9. Under the circumstances of this case, the claimant's repeating of the gossip was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, and was a good-faith error in judgment or discretion; the incident in 2009 is not current enough or similar enough to consider this as a repeat offense. While the employer may have had a good business reason for discharging the claimant, it 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.

**DECISION:**

The representative's June 8, 2011 decision (reference 01) 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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