

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA J MOONEY
Claimant

APPEAL NO. 08A-UI-06684-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**APAC CUSTOMER
SERVICES OF IOWA LLC**
Employer

**OC: 06/15/08 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated July 11, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 20, 2008. The claimant participated. The employer participated by Turkessa Newsone.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from October 8, 2001, until June 18, 2008, when she was discharged for an incident that had occurred the previous week, June 14, 2008. Ms. Mooney was employed as a full-time customer service representative and was paid by the hour.

A decision was made to terminate Ms. Mooney from her employment with the captioned company based upon the claimant's engagement in a dispute with another worker about seating and a headset. Ms. Mooney believed that the other worker had taken her seat without authorization and also believed the other worker was using her headset. When the claimant attempted to claim her seat and property, a dispute developed between the parties, with both parties raising their voice and using inappropriate language at times. The claimant was allowed to continue working the remainder of that day, the following workday, and was discharged after approximately two hours of work on June 18, 2008. Ms. Mooney had been previously counseled on one occasion about appropriate demeanor with clients.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge in this case is whether the evidence establishes that Ms. Mooney was discharged for intentional misconduct in connection with the employment. It does not.

Here, the evidence establishes that Ms. Mooney was upset because an identification badge would not allow her access to the work area on the day in question and that when she returned, she reasonably believed that another worker had taken her workplace and personal headset. The evidence establishes that when Ms. Mooney attempted to reclaim her seat and property, a verbal dispute developed between the parties, with both parties becoming angry and raising their voices. The claimant was not discharged at that time nor the following workday and was allowed to begin work on June 18, 2008, before being discharged approximately two hours into the work shift.

Although the administrative law judge is cognizant the claimant had received one verbal warning in the past for inappropriate conduct with a client, the administrative law judge nevertheless concludes that the claimant's conduct on June 14, 2008, was more in the nature of an isolated instance of poor judgment rather than disqualifying intentional misconduct on the part of the claimant. The administrative law judge notes that the other employee was not discharged and further notes that the claimant was allowed to continue working for the remainder of that workday, a full day thereafter, and a portion of a third day before being discharged.

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.

For the reasons stated herein, the administrative law judge places more weight on the claimant's sworn and direct testimony than the hearsay evidence that was available from the employer's witness. Unemployment insurance benefits are allowed. The claimant was discharged under non-disqualifying conditions.

DECISION:

The representative's decision dated July 11, 2008, reference 01, is hereby affirmed. The claimant was discharged under non-disqualifying conditions. The claimant is eligible to receive unemployment insurance benefits, provided she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw