

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE A BENSLEY
Claimant

APPEAL NO. 06A-UI-10175-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE EASTER SEAL SOCIETY OF IA INC
Employer

**OC: 09/24/06 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Stephanie A. Bensley (claimant) appealed a representative's October 16, 2006 decision (reference 01) that concluded she was not qualified to receive benefits, and the account of The Easter Seal Society of Iowa, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 1, 2006. The claimant participated in the hearing with her witness, Ben Meed. Mike Bensley was also available to testify on the claimant's behalf. Sara Hardy, John Murphy and Brenda Boten appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 14, 2005. The claimant worked as a full-time independent living provider. The employer's code of conduct informs employees they are expected to treat customers and co-workers with respect.

On August 1, 2006, the employer implemented a new payroll policy that was effective September 1, 2006. Under the new payroll policy, employees, such as the claimant, had to have their payroll checked direct deposited into their bank account. Even though the employer had previously allowed employees to pick up their payroll checks at work, as of September 1, 2006, the employer did not allow this practice to continue. If an employee did not have her payroll check directly deposited into her bank account, the employer mailed the employee's payroll check on pay day.

The claimant submitted paperwork to have her payroll check direct deposited to her bank account on August 31. The claimant did not submit the paperwork in time for the employer to send this information to ADP, the company that processes the employer's payroll checks, so her

payroll check could be direct deposited into her bank account on September 22. The employer sends direct deposit information along with payroll information and the employer had already submitted payroll information to ADP before August 31. The employer verified the claimant's information on or about September 18 or 19 and then forwarded the information to ADP.

Since the employer's new payroll system had gone into effect, the claimant experienced some problems getting her paychecks on time. The claimant expected her paycheck to be deposited into her bank account on September 22. On September 22 when her bank did not have a record of her payroll check being deposited, the claimant was upset and called the employer. The claimant left a message on John Murphy's answering machine. Murphy was not at work, but returned the claimant's call later in the afternoon. When Murphy talked to the claimant she was very upset and irate that her payroll check had not been deposited in her bank account that day. The claimant needed her paycheck to buy some necessities and had counted on this money being available to her on September 22. Although Murphy reported that the claimant swore at him and made derogatory comments about his payroll department, the claimant denied swearing at him. The claimant acknowledged she had been rude to him and had raised her voice while talking to him. Meed was in the same room as the claimant when she talked to Murphy and did not hear her swear at Murphy.

After the claimant had an opportunity to calm down, she realized she had been extremely rude to Murphy. She attempted to call Murphy and apologize to him but was not successful. The claimant experienced problems with her paycheck after the employer implemented the new payroll system and the September 22 incident was the "final-straw" incident for the claimant. Prior to September 22, the claimant's job was not in jeopardy. Prior to September 22, the claimant had not talked to a co-worker the same way she had talked to Murphy. On September 25, the employer discharged the claimant for the way she treated a co-worker, Murphy, over the phone on September 22, 2006.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for discharging the claimant. The claimant acknowledged she had been rude to Murphy when she talked to him on September 22.

While the claimant's conduct and comments to Murphy on September 22 are not condoned, a single hotheaded incident does not by itself rise to the level of work-connected misconduct. On September 22, the claimant expected and counted on her paycheck being deposited into her bank account. The claimant had no knowledge she would have to wait over a month for her payroll check to be direct deposited into her bank account. Since this was a new system, it is difficult to understand why the employer did not make sure employees did not have to wait over a month to get their paycheck direct deposited into their bank accounts. Since the claimant had previous problems with her payroll checks after the employer implemented its new policy, it is not difficult to understand why the claimant was frustrated and took out her frustration on Murphy. In this case the employer did not establish that the claimant committed work-connected misconduct based on the September 22 isolated incident. Therefore, as of September 24, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's October 16, 2006 (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of September 24, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs