

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MISSY L DICUS
Claimant

APPEAL NO. 07A-UI-03534-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC
Employer

OC: 03/04/07 R: 01
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Labor Ready, filed an appeal from a decision dated March 30, 2007, reference 01. The decision allowed benefits to the claimant, Missy Dicus. After due notice was issued, a hearing was held by telephone conference call on April 23, 2007. The claimant participated on her own behalf. The employer participated by Branch Manager Dave Etzel.

ISSUE:

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

FINDINGS OF FACT:

Missy Dicus was employed by Labor Ready from June 23, 2006 until February 28, 2007, as a full-time customer service representative. She was discharged by District Manager John Robertson on February 28, 2007, for "insubordination" and "filing false complaints." The employer did not present any evidence of any final act which precipitated the discharge, nor any specific evidence regarding past acts which were taken into consideration when the decision was made.

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case, the employer did not present evidence of any specific acts or omissions on the part of the claimant that caused the discharge. Mere allegations of misconduct are insufficient, and the administrative law judge considers the employer to have failed to meet its burden of proof. Disqualification may not be imposed.

DECISION:

The representative's decision of March 30, 2007, reference 01, is affirmed. Missy Dicus is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw