

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ROSE M WESTCOTT
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TPI
ATTN GREG BOLLES
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WINTHROP IA 50682

Appeal Number: 05A-UI-00223-HT
OC: 12/21/03 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Rose Westcott, filed an appeal from a decision dated December 28, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on January 24, 2005. The claimant participated on her own behalf. The employer, TPI, did not provide a telephone number where a representative could be contacted and did not participate.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Rose Westcott was employed by TPI from August 27, 1994 until November 30, 2004. She was a full-time production worker.

On November 30, 2004, the claimant was on break and went to the parking lot to her car. By the time she got to her car she was suddenly overtaken by an urgent need to urinate. She emptied her bladder on the gravel parking lot next to her car, but was seen by her Supervisor, Lewis Fryberger. When she got into her car to get her purse he approached the vehicle and said he wanted to see her in the supervisor's office. A union representative was present along with Mr. Fryberger and the claimant was notified she was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant acknowledged to urinating in the employee parking lot because the need overcame her suddenly. While this is not the most prudent thing to have done, it appears to have been a one-time error in judgment. The employer has not produced any evidence of other factors which contributed to the decision to discharge or that the claimant had been warned about this in the past. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984).

DECISION:

The representative's decision of December 28, 2004, reference 01, is reversed. Rose Westcott is qualified for benefits, provided she is otherwise eligible.

bgh/sc