

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

ALEXI S ELSTON  
114 – 26<sup>TH</sup> ST #6  
FT MADISON IA 52627

APAC CUSTOMER SERVICES OF IOWA  
C/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-00619-CT  
OC: 11/30/03 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Alexi Elston filed an appeal from a representative's decision dated January 8, 2004, reference 02, which denied benefits based on her separation from APAC Customer Services of Iowa (APAC). After due notice was issued, a hearing was held by telephone on February 11, 2004. Ms. Elston participated personally and Exhibit A was admitted on her behalf. The employer participated by Chaka Schulte, Administrative Assistant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Elston began working for APAC on June 22, 2001 as a full-time telephone sales representative. On October 22, she was involved in a verbal altercation with a coworker, Chad Snyder, in which both used the term "nigger lover." Mr. Snyder then told an African-American coworker what Ms. Elston had said. The employer met with all three individuals and asked that they write statements as to what had occurred. The other two returned to work but Ms. Elston remained. She was told that the employer would need to complete a termination form. The form, Exhibit A, was completed by the employer and presented to Ms. Elston for her signature. She did not tell anyone that she was quitting but did sign the form because she was told she had to. She was advised during the meeting that she could talk with the center manager, Ryan Ball, the next day concerning her job.

Ms. Elston spoke to Ryan Ball on October 23 and told him she did not want to lose her job. Mr. Ball advised her that she could continue working while an investigation was taking place concerning the events of October 22. Ms. Elston did not work further that week as she had put in all of her hours for the week. She called the employer on October 27 regarding her status and was told that she had been discharged.

#### REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether the separation was a quit or a discharge. The totality of circumstances convinces the administrative law judge that Ms. Elston was discharged. Even if the administrative law judge were to find that she quit on October 22, it would be concluded that Mr. Ball effectively allowed her to rescind the resignation when he spoke to her on October 23. He told her she could continue working pending the results of the investigation of her conduct of October 22. By telling her that she could continue working, the employer nullified any resignation that might have taken place on October 22. Ms. Elston was notified on October 27 that she was discharged.

The employer participated in the fact-finding interview held on January 7, 2004. At that time, Ms. Elston contended that she had been reinstated by Mr. Ball and that she was later discharged by Michael Chapman. In spite of knowing the position Ms. Elston was going to take, the employer did not offer testimony from any of the individuals who were involved in the meeting of October 22 or the meeting of October 23. The employer's evidence was not sufficient to refute Ms. Elston's contention that she was discharged. For the reasons stated herein, the administrative law judge concludes that Ms. Elston's separation shall be considered a discharge.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). It is true that Ms. Elston used the word "nigger." However, it was used in a private, one-on-one conversation with a coworker outside the building. The term was not used in a name-calling context against any person of color. While, Ms. Elston may have used poor judgment in her choice of language, her conduct did not evince a wanton or willful disregard of the employer's interests or standards. An isolated instance of poor judgment does not constitute disqualifying misconduct. See 871 IAC 24.32(1). While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits.

Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated January 8, 2004, reference 02, is hereby reversed. Ms. Elston was discharged by APAC but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf