

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARILYN R STORBY
Claimant

APPEAL NO. 17A-UI-04613-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALL STATES AG PARTS INC
Employer

OC: 04/02/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Marilyn Storby (claimant) appealed a representative's April 26, 2017, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with All States AG Parts (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 16, 2017. The claimant participated personally. The employer participated by Robert Koren, Distribution Manager, and Bonnie Clough, Human Resources Administrator. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 4, 2016, as a full-time material handler. The claimant signed for receipt of the employer's handbook on April 4, 2016. On February 22, 2017, the employer talked to the claimant about her behavior and performance. It did not tell the claimant the talk was considered a warning or warn the claimant that further infractions could result in some disciplinary action. The claimant stopped talking to co-workers and kept to herself after this conversation with the employer.

On February 28, 2017, the employer issued the claimant a Performance Appraisal. She scored "good" or "very good" in every category. In the attitude category, the employer wrote comments, "Overall Marilyn does good in this category. Some improvement could be made on communication with coworkers". On March 27, 2017, the employer issued the claimant a written warning for behavior and performance after some co-workers complained about the claimant. The claimant did not understand what the co-workers were complaining about. The employer notified the claimant that further infractions could result in termination from employment.

On April 5, 2017, the claimant was sitting in the break room before her shift started. Two other employees were sitting together separate from the claimant talking. One was making remarks about her renovations for graduation and feeling torn about being at work. As she exited the break room the claimant said to herself, "If you don't want to be here, just go home". The co-workers complained to the employer. The employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The claimant's statement was a good faith error in judgment or discretion at most. It appears the co-workers were overly sensitive to the claimant's advice.

The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 26, 2017, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs