

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHERINE E CURRIE
Claimant

APPEAL NO. 07A-UI-06905-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC
Employer

**OC: 06/17/07 R: 02
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

DES Staffing Services, Inc. (DES) filed an appeal from a representative's decision dated July 11, 2007, reference 01, which held that no disqualification would be imposed regarding Katherine Currie's separation from employment. After due notice was issued, a hearing was held by telephone on July 31, 2007. The employer participated by Dan Sethi, Manager. Ms. Currie responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing.

ISSUE:

At issue in this matter is whether Ms. Currie was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Currie was employed by DES from January 2, 2006 until June 22, 2007 as a full-time account executive. Her job involved working in the field calling on potential customers. The employer received complaints from Ms. Currie's coworkers that she told them she was spending time shopping and looking for another job during work time. When questioned, Ms. Currie denied that she was shopping during work time. She also denied that she was looking for other work.

The employer met with Ms. Currie on June 11, at which time she was again questioned as to whether she was performing personal errands and looking for a new job on company time. She again denied the allegation. She indicated she was happy with her job and intended to remain in it. On June 12, she called and reported that she had been involved in an auto accident at Target and would not be back for the remainder of the day. A coworker told the manager that Ms. Currie had said she was going to falsify her reason for being absent the afternoon of June 12 instead of giving the true reason, which was that she did not have childcare. The employer confirmed that she did, in fact, have a minor accident while at Target that day.

Ms. Currie returned to work on June 13 and continued to perform her normal job until notified of her discharge on June 22, 2007. The decision to discharge was prompted by complaints from coworkers as to why she was being allowed to continue in the employment after making statements that she was shopping and job hunting on company time. Ms. Currie had not received any written warnings advising her that her continued employment was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was predicated on a current act of misconduct. See 871 IAC 24.32(8). The employer spoke to Ms. Currie on June 11 regarding statements she was alleged to have made to coworkers about shopping and job hunting on company time. She denied the allegations. She also indicated her intent to remain with DES. Although there was an allegation that she gave false information regarding her reason for being absent the afternoon of June 12, the employer was able to confirm that she did have an accident at Target that day.

Even if the administrative law judge were to find that Ms. Currie did, in fact, give false information regarding her absence of June 12, the fact remains that the employer allowed her to continue working in her normal job until June 22. She was not notified before June 22 that she was being considered for discharge. The administrative law judge is not satisfied that there were additional acts of misconduct after June 12. Although her coworkers may have continued to complain about the fact that she was still in the employment, the evidence failed to persuade the administrative law judge that those complaints were based on new acts rather than ones already reported to the employer. In short, the employer failed to establish that there was a current act of misconduct in relation to the June 22, 2007 discharge date. As such, no disqualification is imposed.

DECISION:

The representative's decision dated July 11, 2007, reference 01, is hereby affirmed. Ms. Currie was discharged by DES but a current act of misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css