

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANA J WILLIAMS

Claimant

APPEAL NO: 11O-UI-00143-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DICLEAN BUILDING SERVICES LLC

Employer

OC: 09/27/09

Claimant: Appellant (2)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 30, 2010 determination (reference 02) that disqualified her from receiving benefits and held the employer's account subject to charge because the claimant had been discharged for disqualifying reasons. A hearing was scheduled in this case before another administrative law judge in November 2010. The claimant appealed the decision issued in November. The Employment Appeal Board remanded this matter to the Appeals Section for a new hearing.

On February 11, 2011, another hearing was held. The claimant participated in the hearing with her attorney, Veronica Kirk. The employer, for a second time, did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge finds the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in July 2008. She worked 25 to 30 hours a week as a rest area attendant. During her employment, she did not receive any written warnings. In July 2009, the employer talked to her about the way she interacted with people who used the restrooms at the rest area. The claimant does not recall receiving any warnings about failing to clean the restrooms satisfactorily.

On July 19, 2010, the employer discharged the claimant for failing to satisfactorily clean the men's restroom on Friday, July 16. The claimant worked July 15, but not July 16. When she worked on July 15, she had problems being able to get into the men's restroom to clean it. The claimant understood she could not close the restroom to clean it and the rest area was very busy that day. When the claimant works, she works half of her shift on one side the Interstate and the rest of her shift on the other side of the Interstate.

The employer received a complaint on July 15 or 16 that the men's restroom was a mess and had not been cleaned. The claimant understood her supervisor determined the claimant was the person responsible for the men's restroom that had been complained about.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Prior to July 19, 2010, the claimant had no knowledge her job was in jeopardy for unsatisfactory job performance. Even though the claimant received a verbal warning in July 2009, this was for the way she interacted with people and not for failing to clean a restroom satisfactorily. Since the employer did not participate, the evidence does not establish what day the restroom was not cleaned or if the claimant even worked that day.

For purposes of this decision, assume the claimant worked the day someone complained about a dirty restroom. Since the claimant was unable to close the restroom to clean it, the facts indicate she worked to the best of her ability when the rest area was unusually busy. The facts do not establish that she intentionally failed to perform her work satisfactorily or that she was negligent in her job duties to the extent that she committed work-connected misconduct. Therefore, as of July 18, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's September 30, 2010 determination (reference 02) is reversed. The employer may have had business reasons for discharging the claimant, but the claimant did not commit work-connected misconduct. As of July 18, 2010, the claimant is qualified to receive

benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css