

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA L REHA**  
Claimant

**APPEAL NO: 14A-UI-06596-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AGRI DRAIN CORP**  
Employer

**OC: 06/08/14**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 24, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 17, 2014. The claimant participated in the hearing with Attorney Katie Carlson. Kris Stringham, Human Resources Director; Kim Wedemeyer, Vice-President; and Lisa Newby, Sales and Marketing Manager; participated in the hearing on behalf of the employer and were represented by Attorney Jim Gilliam. Employer's Exhibits One through Three were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer service telephone representative for Agri Drain from February 14, 2000 to June 6, 2014. She was discharged for taking copies of documents home.

In November 2013 the employer began monitoring errors in a different manner and found several errors. It then began holding group and individual meetings with employees to discuss the errors.

On March 21, 2014 Vice-President Kim Wedemeyer, Human Resources Director Kris Stringham, and Sales and Marketing Manager Lisa Newby went to the claimant's desk and began reviewing copies of sales orders from that week on her desk. They asked her why she was making copies and the claimant stated that it was easier for her to review her accuracy on her orders by looking at hard copies. Several performance issues had been discussed that week and employees had been told they could do whatever they needed to do to improve their accuracy. The management employees focused on the claimant's errors that week and the claimant wanted something to look at.

The employer documented the conversation with a memo to the file but did not have the claimant initial or sign the memo indicating she agreed that discussion occurred (Employer's Exhibit One).

On June 5, 2014 the claimant was concerned she was going to lose her job because she had made errors on a customer order that week. The claimant called her husband to talk about the situation around her lunch break from her work phone. Ms. Wedemeyer listened to the claimant and her husband's phone call. During the call the claimant explained what was going on at work to her husband and stated she thought she might get fired that day. Her husband said that if the employer would not back her up with that customer, whom the claimant felt was verbally abusive, than he did not want her working there anymore. He stated, "Enough is enough." The claimant said she had printed out documents she would need for her own protection as she had been advised to do by the Iowa Civil Rights Commission (ICRC). Her husband said if Ms. Wedemeyer "really wants to continue this and they want a lawsuit then we might give them one." The claimant had talked to the ICRC two times the week of March 10, 2014 because she was concerned she was working in an intimidating and/or harassing environment. The claimant felt she had been singled out by a disciplinary policy that only applied to her with regard to the number of errors allowed. The ICRC told her it was not an ethical practice to enforce a disciplinary policy against one employee. The employer's handbook directs employees with questions to contact the ICRC. The employee took copies of the customer order she had made a mistake on, home to study that evening and brought it back June 6, 2014. She admitted doing so when asked by the employer.

On June 6, 2014 the employer held a meeting with the claimant to talk about errors made on one customer's account that week. The claimant took 40 to 50 orders per day on average. She also talked to other customers and provided general information to customers and prospective customers and quotes. The error in question June 6, 2014 was no bigger than a typical error and the customer was not more important than any other customer. When the claimant arrived at the meeting she could see the employer had prepared a corrective action form and the claimant refused to sign it after the employer read it to her. The claimant felt the warning contained inaccurate information. Ms. Wedemeyer then disclosed she had listened to the claimant's private phone call with her husband on June 5, 2014 and indicated she was very angry after listening to the conversation. The claimant stated she had talked to the ICRC and Ms. Wedemeyer was quite angry when she received that information as well.

At 11:20 a.m. on June 6, 2014 the employer met with the claimant for a second time and terminated her employment for taking documents home on June 5, 2014.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. 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 substantial and 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).

While the claimant may have taken documents home in March 2014 the employer cannot establish by the preponderance of the evidence that the claimant was told she could not take documents home at that time. The claimant denies ever being told she could not do so in March 2014 and the employer failed to have the claimant sign or even initial the undated memo to the file that purported to say it discussed with the claimant that she could not take files home. If violation of that rule was serious enough to result in termination of employment it would seem the employer would have issued the claimant a documented verbal or written warning at that time.

As it stands, the only concrete evidence of potential misconduct was the claimant's admission that she took files home June 5, 2014. She credibly testified she did so in order to review her errors and because she may have misunderstood the advice from the ICRC regarding documentation of her work situation. Additionally, the employer was extremely angry with the claimant after listening to the private phone call between the claimant and her husband June 5, 2014 which most likely also played a role in the employer's decision to discharge her rather than issue a written or final warning.

Consequently, as this was at most an isolated incident of misconduct, the administrative law judge concludes the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The June 24, 2014, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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