

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHIRLEY D BENTLEY
Claimant

APPEAL NO. 09A-UI-03713-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC SERVICES LLC
Employer

**Original Claim: 01/25/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated March 2, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 1, 2009. The claimant participated personally. The employer participated by John Stanford, Employer Relations Manager.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: The claimant worked as a dining room attendant. She was hired in June of 2007. The claimant last worked for employer on January 19, 2009. The claimant was discharged on January 20, 2009. On January 19, 2009, the employer received a report that the claimant had made a comment that was deemed racially offensive by a co-worker. The employer promptly investigated the matter. The employer was properly concerned about the comments made and interviewed the co-worker who heard the comment, the worker who the comments were directed at, and the claimant. The claimant was asked to fill out some forms on January 19, 2009. Because this was at the end of her shift, she asked if she could come in tomorrow and complete any paperwork. On January 20, she came in and met with John Stanford and Shelly Pratt, Human Relations Manager. The claimant was asked to put in writing what she had said. The claimant initially declined. The claimant was told that if she would not put in writing what she said, she was considered to have voluntarily quit, and she was escorted off the premises. The claimant offered to provide a written statement immediately after she was told she "quit."

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

The gravity of the incident, number of policy violations, and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

The claimant was not discharged for the comment she made but due to the fact that she did not want to put in writing what she had said. The employer had the information. The claimant did not appear to be very sophisticated. The claimant was reluctant to provide a written statement. While she knew on January 19 the employer wanted additional paperwork completed, she was not aware she would have to make a statement in writing on January 20, 2009. While the employer acted reasonable in conducting an investigation and wanting to do a thorough job, the failure of a claimant to immediately to agree to write out a statement, which could be against her interest, is not misconduct. The employer can discharge the claimant for not complying with the request immediately, but that does not make it misconduct. The claimant's reluctance to prepare a document on the spot was a good-faith error in judgment. The claimant offered to provide a written statement but was told it was too late.

In this matter, the evidence fails to establish that the claimant was discharged for an act of misconduct when the claimant failed to immediately agree to provide a written statement.

DECISION:

The representative's decision dated March 2, 2009, reference 01, is reversed. The claimant is eligible to receive unemployment insurance benefits, provided the claimant meets all other eligibility requirements.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/kjw