IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANNA MARIA MCDONALD
Claimant

L A LEASING INC/SEDONA STAFFING
Employer

APPEAL NO: 13A-UI-02799-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/06/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Anna Maria McDonald (claimant) appealed a representative's February 28, 2013 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from L A Leasing, Inc. / Sedona Staffing (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 30, 2013. The claimant participated in the hearing and was represented by John Singer, Attorney at Law. Colleen McGuinty appeared on the employer's behalf and presented testimony from one other witness, Ali Mangelsdorf. Rafael Geronimo served as interpreter. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began taking assignments with the employer on July 19, 2011. She was on the same assignment from that date until she was injured on the assignment; as of July 11, 2012 she began working on a light duty basis in house in the employer's Moline, Illinois office, pending her medical release to return to her original assignment. Her light duty work was to do light clerical work on an 8:00 a.m. to 5:00 p.m., Monday through Friday schedule. Her last day of work was January 10, 2013. The employer discharged her on that date. The stated reason for the discharge was inappropriate behavior in the employer's lobby on January 9.

The claimant and a coworker came upstairs at about 4:50 p.m. and asked the front desk receptionists, one of whom was Mangelsdorf, to sign them out but to put them down for leaving

at 5:00 p.m. The receptionists declined to do so as it was not 5:00 p.m. Rather than returning to their work station for the ten minutes, or agreeing that the receptionists should show them leaving at 4:50 p.m., the claimant and her coworker then sat in the reception area for ten minutes. During that time they were disruptive, talking and laughing. Their conversation was at least primarily in Spanish. While the claimant denied using the word, both receptionists heard the claimant saying a word that even the claimant acknowledged meant "b - - - -" or "w - - - -. "

The claimant had been given a final disciplinary warning on January 2, 2013. While the warning was specifically for a no-call/no-show and attendance issues, the warning advised her that any further issues of any kind could result in discharge. After the claimant's disruptive and inappropriate behavior on January 9, the employer determined to discharge the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's behavior on January 9 particularly after having been given a final disciplinary warning shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's February 28, 2013 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of January 10, 2013. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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