

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN A BRENNECKA
Claimant

APPEAL NO: 14A-UI-04648-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

G M R I INC
Employer

OC: 04/13/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 1, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated at the May 22 hearing. Jeremy Wiochal, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes 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 as a full-time server in February 2003. After Wiochal became the general manager, the employer stressed that employees must work to get along together at work, they must treat customers and co-workers with respect and cannot make abusive comments about customers or co-workers.

On April 3, 2014, a co-worker, M., became very upset with the claimant. M. told the claimant she hated her and wished she had never come back to work. M. then threw money at the claimant. The claimant had no idea why M. acted that way and calmly walked away from her.

After the employer started to investigate the incident, the employer received information that the claimant made a derogatory and obscene comment about M. after M. had walked away. The employer suspended the claimant on April 5 to investigate the incident.

Prior to April 3, the claimant's job was not in jeopardy and she did not have any compatibility warnings. By April 10, the employer received statements from two co-workers that the claimant made an obscene, derogatory comment about M. on April 3. When the employer asked the claimant about this allegation on April 10, she denied making any derogatory or obscene comment about M.

On April 14 the employer informed the claimant she was discharged because she had created a hostile work environment and for compatibility issues or for making a demeaning comment about another employee.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. Even though the employer relied on statements from two employees that the claimant made a derogatory and obscene comment about M., they did not testify at the hearing. At the hearing the employer relied on unsupported hearsay information. Since the claimant's testimony is credible, her testimony must be given more weight than the employer's hearsay information. The facts establish the claimant did **NOT** make a derogatory, obscene comment about M. As a result, the claimant did not commit work-connected misconduct. As of April 13, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's May 1, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of April 13, 2014, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs