

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KATHLEEN M FRITZ
59 THOMPSON DR
PALO IA 52324

CEDAR RAPIDS DODGE INC
1919 DODGE RD NE
CEDAR RAPIDS IA 52402

Appeal Number: 06A-UI-00009-RT
OC: 06-12-05 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Cedar Rapids Dodge, Inc., filed a timely appeal from an unemployment insurance decision dated December 22, 2005, reference 03, allowing unemployment insurance benefits to the claimant, Kathleen M. Fritz. After due notice was issued, a telephone hearing was held on January 18, 2006, with the claimant participating. Kevin Mohler, Parts Manager, participated in the hearing for the employer. Jamie Sego, Office Manager, and James Kreutner, Counter Sales, were available to testify for the employer but not called because their testimony would have been repetitive and unnecessary. Employer's Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a part-time parts delivery person from August 29, 2005 until she was discharged on October 28, 2005. The claimant was discharged for poor performance of her job duties. The only reason for the poor performance was the claimant's inability to comprehend and grasp the employer's computer system. The claimant had significant difficulties with the employer's computer system and in particular the acronyms. The claimant simply could not "get it." The claimant tried to learn the computer system but was unable to do so. Her failure to comprehend and grasp the computer system was not willful or deliberate. The claimant never received any warnings or disciplines. The claimant did receive three days of training in a row from James Kreutner, Counter Sales, but the training was too quick and too fast for the claimant and she still had troubles thereafter and continued to make mistakes. The claimant was then discharged. The claimant was on a trial period of employment as shown at Employer's Exhibit One. Pursuant to her claim for unemployment insurance benefits filed effective June 12, 2005 and reopened effective October 30, 2005, the claimant has received unemployment insurance benefits in the amount of \$200.00 for benefit week ending November 5, 2005. Thereafter, the claimant obtained another job and has made no weekly claims for benefits. The claimant received benefits prior to her separation from the employer herein but they are not relevant here.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not.
2. Whether the claimant is overpaid unemployment insurance benefits. She is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties agree, and the administrative law judge concludes, that the claimant was discharged on October 28, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. It is well established that the employer has the burden to prove disqualifying misconduct. See Iowa Code section 96.6 (2) and Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982) and its progeny. The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. There is no dispute about the facts between the parties. The claimant was discharged for poor performance of her job duties because she could not comprehend and grasp the employer's computer system. The claimant conceded that she had difficulties with the computer system. The claimant testified that there were many acronyms used in the computer system that she simply could not "get it." The employer's witness, Kevin Mohler, Parts Manager, credibly testified that he had no evidence that the claimant's failures were willful or deliberate. The claimant also received no warnings or disciplines. The evidence does establish that the claimant had training for three days in a row but the claimant testified it was too quick and fast and that she still had troubles with the employer's computer system. Mr. Mohler testified that the claimant was in an introductory period or a trial period and under the employer's policy during the first 90 calendar days an employee can be discharged for not performing his or her duties. However, Iowa Workforce Development rules concerning unemployment insurance benefits do not recognize any such introductory period or trial period of employment. Accordingly, the administrative law judge concludes that there is not a preponderance of the evidence of any behavior on the part of the claimant that was willful, deliberate, or carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. Rather, the evidence establishes that the claimant was discharged for mere inefficiency, unsatisfactory conduct, failure in good performance as a result of inability or incapacity and this is not disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged but not for disqualifying misconduct and, as a consequence, she is not disqualified to receive unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits and misconduct to support a disqualification from unemployment insurance benefits must be substantial in nature. Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395, 398 (Iowa App. 1989). The administrative law judge concludes that there is insufficient evidence here of substantial misconduct on the part of the claimant to warrant her disqualification to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided she is otherwise eligible.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$200.00 since separating from the employer herein on or about October 28, 2005 and reopening her claim for benefits effective October 30, 2005. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision of December 22, 2005, reference 03, is affirmed. The claimant, Kathleen M. Fritz, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because she was discharged but not for disqualifying misconduct. As a result of this decision the claimant is not overpaid any unemployment insurance benefits arising out of her separation from the employer herein.

kkf/kjw