

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICKI L GIPSON**  
Claimant

**APPEAL NO. 12A-UI-03858-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RAVI INC**  
**HOLIDAY IN EXPRESS**  
Employer

**OC: 02/19/12**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Holiday Inn., filed an appeal from a decision dated April 6, 2012, reference 01. The decision allowed benefits to the claimant, Vicki Gipson. After due notice was issued, a hearing was held by telephone conference call on April 30, 2012. The claimant participated on her own behalf. The employer participated by Housekeeper Donna Snyder and General Manager Amy Harrison.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Vicki Gipson was employed by Holiday Inn, from September 20, 2008 until February 16, 2012 as a part-time housekeeper. On February 16, 2012, General Manager Amy Harrison held a staff meeting with the housekeepers and front desk clerks. She stated there had been “a lot of drama and hearsay” going around the workplace and everyone was to stop complaining to each other. The staff was further told that anyone who was complaining or gossiping to anyone other than Ms. Harrison would be fired. This would be done under the company policies of insubordination and refusal to follow a direct order from a supervisor.

As soon as the meeting was over Ms. Gipson and Housekeeper Donna Snyder started to work. The claimant said Head Housekeeper Sheryl Oster had “gone crying like a baby to Amy” and that is why the general manager had been so upset in the morning meeting. Ms. Snyder told her not to say things like that as it was exactly what Ms. Harrison had been talking about in the meeting. She then went to Ms. Oster about the comment and Ms. Oster went to Ms. Harrison.

The general manager questioned Ms. Snyder personally and together they went to Ms. Gipson. The claimant at first denied making the comment but then modified it to say that she had not meant it “like that.” The general manager asked the claimant whether she remembered what the consequences would be for continuing to gossip and spread “drama.” When she acknowledged she did, Ms. Harrison fired her.

Vicki Gipson has received unemployment benefits since filing a claim with an effective date of February 19, 2012.

**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 employer had been very clear when she told the entire staff the consequences would be for anyone continuing to gossip and complain to co-worker. Immediately after the meeting Ms. Snyder engaged in the same type of behavior against which she and the others had just been warned. It was these very types of comments which was causing the "drama" and "hearsay" in the workplace and creating a hostile work environment.

Ms. Gipson denied making the comment although both employer witnesses independently verified her making of the statement and the admission she had made it. She has provided no adequate explanation as to why either of these individuals would fabricate such a story against her and her denial lacks credibility.

The evidence shows the claimant was discharged for creating dissension in the workplace as well as refusing to follow direct, and reasonable, instructions from the supervisor. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of April 6, 2012, reference 01, is reversed. Vicki Gipson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css