

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

MARTHA E SKOG
5165 – 200TH AVE
ALBERT CITY IA 50510

ALBERT CITY IMPROVEMENT CORP
PLEASANT VIEW HOME
410 SPRUCE ST
ALBERT CITY IA 50510-1399

Appeal Number: 05A-UI-03435-DT
OC: 02/20/05 R: 01
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Martha E. Skog (claimant) appealed a representative's March 22, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Albert City Improvement Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 22, 2005. The claimant participated in the hearing. Katherine Herrig appeared on the employer's behalf. 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?

FINDINGS OF FACT:

The claimant started working for the employer on a part-time basis November 24, 2003 and on a full-time basis in early April 2004. She worked as manager of the employer's independent living facility. Her last day of work was February 21, 2005. The employer discharged her on that date. The reason asserted for the discharge was violating the employer's trust policy.

The claimant had a personal situation involving an outside person. On various occasions she had called the home of that person to see if there was an answer, and if there was an answer, she hung up. She made some of these calls from her home, and some from phones in the employer's tenants' homes. Between December 7, 2004 and February 13, 2005 she made 20 such calls. The person made a complaint to the sheriff's office, and on January 20, 2005, the sheriff's office called the employer and advised the employer about the situation. The claimant was not aware of the complaint, and on February 13 she made one more such call, which was made from her home. As a result, a criminal charge of harassment was filed against her on February 22, 2005; she pled guilty to the simple misdemeanor on February 28, 2005. Being advised that these actions were about to become public, the claimant admitted her actions to the employer on April 21, 2005, who then discharged her under the employer's trust policy which advises employees against behavior which could damage the employer's reputation in the community.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is her conduct in harassing the outside person. Illegal off-duty conduct can be work-connected misconduct if the employer's policies prohibit such conduct. Kleidosty v. Employment Appeal Board, 482 N.W.2d 416, 418 (Iowa 1992). The employer's policy does generally advise against outside conduct that could jeopardize the employer's reputation; however, the administrative law judge does not find that the type of off-duty actions the claimant was committing would clearly be understood to be considered to jeopardize her employment. There is no current act of on-duty misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). The claimant's use of the phones within the facility could be considered work-connected misconduct, but there apparently had been no incident of any calls from within the facility since before January 20, 2005, when the employer was made aware of the conduct. While the employer had a good business reason for discharging the claimant, the employer has not met its burden to show disqualifying misconduct.

Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's March 22, 2005 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

ld/s