

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANUS ODELL
Claimant

APPEAL NO. 08A-UI-05769-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND INCORPORATED
Employer

**OC: 05/18/08 R: 02
Claimant: Appellant (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Janus ODell (claimant) appealed an unemployment insurance decision dated June 13, 2008, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Heartland Incorporated (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa, on July 15, 2008. The claimant participated in the hearing. The employer did not appear at the workforce center and, therefore, did not participate. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time leads maintenance on February 23, 2008. She was subsequently promoted to a quality assurance specialist and was in that position when she was terminated on May 21, 2008. She was discharged due to previously making a remark about another employee. On May 15, 2008 the claimant asked a co-worker what another employee named Rachel did on the night shift because all the work they had been putting on her desk was not getting done. Rachel reportedly quit over this remark. The owner was out of town and told the manager to discharge all the employees involved as it seemed to be the most expedient manner in which to deal with these personnel issues. The claimant had never received any disciplinary warnings.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

Iowa Code § 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 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 substantial and 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).

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of job misconduct as that term is defined in the above-stated Administrative Rule. The employer failed to meet its burden. Work-connected misconduct has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated June 13, 2008, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css