

**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**

**JULIANNE PETERSON  
229 MANAWA AVE B  
COUNCIL BLUFFS IA 51501**

**DONNA KESTER  
D/B/A KESTER CONTRACTING  
1416 WILLOW ST  
HARLAN IA 51537**

**Appeal Number: 04A-UI-12798-RT  
OC: 10-24-04 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct  
Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Julianne Peterson, filed a timely appeal from an unemployment insurance decision dated November 16, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on December 21, 2004 with the claimant participating. Donna Kester, doing business as Kester Contracting, participated in the hearing. 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, the administrative law judge finds: The claimant was employed by the employer as a full-time rest area attendant from January 1, 2004 until she temporarily separated from her employment on October 14, 2004. On that day, the claimant was late coming to work and had notified the employer that she was going to be late. She was riding with a coworker, Brandon. When the claimant arrived, she began to go to work. Unbeknownst to the claimant, Brandon had a conversation with the employer and was discharged. Brandon then went to the claimant and said that they had both been discharged but the claimant had not been discharged. The claimant asked the supervisor, Terry, if she had been discharged and he said he did not know and told the claimant to call Ms. Kester. The claimant did so and Ms. Kester told the claimant to leave the keys and uniforms at the rest area and take Brandon home. At that time, the claimant truly believed that she had been discharged and she left her keys and took Brandon home. The claimant, believing she had been discharged, did not return to work. One week later, she dropped off her uniforms but, again, was not told that she was not fired. Another week later, the claimant attempted to call the employer several times unsuccessfully. Finally, three weeks later, the claimant was able to speak to the employer and learned that she had, in fact, not been discharged but there had been a misunderstanding. The employer informed the claimant that she had intended to fire Brandon because of conversations that she had had with Brandon on October 14, 2004. However, Ms. Kester told the claimant that the claimant was not discharged and that Brandon was not discharged for being late but for conversations she had had with him. The claimant asked for her job back and Ms. Kester said she could return immediately the next day and the claimant did so. The claimant only filed for unemployment insurance benefits for three weeks, from benefit week ending October 30, 2004 to benefit week ending November 13, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was 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 first issue to be resolved is the character of the separation. Both parties now agree that the claimant justifiably and genuinely believed that she was discharged but she was not discharged. When the claimant truly believed that she had been discharged, she left the work premises and did not return to work. The administrative law judge concludes under the facts here that the claimant's leaving her job site and not returning does not indicate a voluntary quit because the claimant was under the justifiable belief that she had been discharged. Accordingly, the administrative law judge concludes that the claimant was discharged or justifiably believed that she was discharged on October 14, 2004. The issue then becomes whether the claimant was discharged for disqualifying misconduct.

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. The testimony of the two witnesses is remarkably similar. The bottom line here is that there was a misunderstanding between the claimant and the employer. The claimant was told by a coworker, Brandon, that both of them had been fired and, when the claimant called the employer, she was told to leave her keys and uniforms at the rest area and take Brandon home. The claimant believed that she had been discharged. However, the employer meant only that the claimant was to leave Brandon's keys and uniforms but not hers. Because the claimant does not have a phone and lives 50 miles away, the employer was unable to reach the claimant. Finally, after three weeks, the claimant was able to reach the employer and learned about the misunderstanding and learned that she had not been discharged and was offered her job back which the claimant accepted and went back to work the next day. It is true that the claimant was late coming to work on October 14, 2004 but she notified the employer of her tardy and that was not the reason for the discharge of Brandon but, rather, for conversations between the employer and Brandon that had nothing to do with the claimant. Under the evidence here, the administrative law judge concludes that the claimant's conduct was not a deliberate act constituting a material breach of her duties nor did it evince a willful or wanton disregard of the employer's interests nor was it carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. What occurred here was a mere misunderstanding more in the nature of ordinary negligence in an isolated instance and is not disqualifying misconduct. Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged, or justifiably believed that she was discharged, but not for disqualifying misconduct and, as a consequence, she is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible.

DECISION:

The representative's decision of November 16, 2004, reference 01, is reversed. The claimant, Julianne Peterson, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because she was discharged or justifiably believed that she was discharged, but not for disqualifying misconduct.

tjc/b