

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BEVERLY MEIXNER
Claimant

APPEAL NO. 12A-UI-09853-W

**ADMINISTRATIVE LAW JUDGE
DECISION**

STUFF ETC INC
Employer

OC: 07/08/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a fact-finding decision dated August 7, 2012, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 26, 2012 at the Cedar Rapids workforce center. Claimant participated personally. Employer participated by Marce Billups. Exhibits A through D were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

Claimant began employment on August 15, 2005 and she was discharged on July 11, 2012 by employer because of customer service complaints. Claimant's job was described as running the changing rooms.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct.

Customer service complaints can often place employers in a very difficult situation. To prove misconduct, the employer must ordinarily present first-hand evidence of a current act of misconduct. It is awkward, however, to call a customer as a witness against an employee in an unemployment hearing. Consequently, employers often lose these claims for failing to have credible first-hand evidence at the time of hearing.

Based upon the evidence in the record, it is believable that the claimant had customer service issues. Customer service may not have been claimant's greatest asset as an employee.

Claimant herself acknowledged that she had gained the reputation, and, in fact, the nickname of being the “clothes Nazi”. In claimant’s opinion, this was only because she followed the rules quite strictly at the changing rooms.

The employer, however, presented no credible evidence of any current act of misconduct at the time of hearing. The only evidence the claimant presented was a hearsay statement that, on July 10, 2012, a customer complained to an associate and concluded that the claimant was “hateful” and “rude.” At hearing the employer was unable to even provide the specifics of the complaint other than that the customer concluded that the claimant was “hateful” and “rude.” Neither the associate nor the customer testified at hearing. The claimant testified essentially that she simply followed the rules at changing room. Based upon this evidence, the employer simply did not meet its burden of proof to demonstrate an intentional violation of the employer’s reasonable standards.

The employer certainly has a right to make an effort to improve its standards of customer service. This decision does not find that the claimant’s termination was a poor personnel decision. It is only decided herein that the employer failed to prove a specific act of misconduct in July 2012.

DECISION:

The fact-finding decision dated August 7, 2012, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/pjs