

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BESSIE M PAGE
Claimant

APPEAL NO: 11A-UI-11501-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

J PETTIECORD INC
Employer

**OC: 07/31/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 24, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing with her attorney, Mark Sherinan. Terry Cooney was available to testify on the claimant's behalf, but did not. Todd Elverson, attorney at law, appeared on the employer's behalf. Jenelle Patterson, the chief financial officer, Nick Wylie, the executive vice president, and Jerry Hans, the operations manager, testified on the employer's behalf. Jeff Pettiecord was available to testify, but did not.

During the hearing, Employer Exhibit One through Five and Claimant Exhibits A and B were offered and admitted as evidence. Employer Exhibit Six was offered, but the ruling on its admissibility was not made during the hearing. As of the date of this decision, Employer Exhibit Six, a copy of a verbal discussion in April 2009 is not admitted as evidence because it is already part of the record. This document is part of Employer's Exhibit One which was admitted as evidence. It is noted that Employer Exhibits Four and Five and Claimant Exhibit A were all documents included in Employer Exhibit One.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in February 2008. The claimant worked full time as an accounts payable clerk. Within a month of being hired, the claimant received a copy of the employer's policies. (Employer Exhibit Two.) The claimant understood the employer did not permit employees to discuss wages or raises with co-workers. (Employer Exhibit Two.)

In June 2011 before the claimant went on vacation, Patterson told her that a co-worker, Tammy, would not be receiving a raise. Tammy and the claimant were friends. When Tammy asked the claimant if she thought she would get a raise, the claimant did not voice an opinion. Instead, the claimant suggested that when Tammy talked to the employer she present arguments about why she deserved a raise.

When the claimant reported to work after her vacation, Tammy told her she got a raise. The claimant made a comment about that being good. She said nothing else. On July 13, the claimant asked Patterson for her annual review. The claimant knew about Tammy's raise and also expected a raise. Patterson talked to the claimant about issues the employer had with the claimant and/or work during the last year. The claimant was upset after learning she would not receive a raise, when Tammy had received a raise. The claimant made a comment to Patterson that she knew Tammy had received a raise and did not understand why she would not.

The employer verified the July 13 oral evaluation by giving the claimant her written performance evaluation on July 19. Even though the claimant did not agree with it, she signed it on July 19. When Patterson came to work on July 20, she discovered her office door was not locked as she usually locked it. She asked Tammy if anyone had been in her office. The claimant denied she had been in Patterson's office.

On July 22, the claimant asked for a copy of her recent performance evaluation. The employer discovered the page with the claimant's signature on July 19 was no longer with her performance evaluation. The claimant signed the performance evaluation again on July 23. (Employer Exhibit Five.) At some point, the employer learned the claimant had contacted an attorney about a possible discrimination complaint. (Claimant Exhibit A.)

On August 2, Tammy's timecard was found in the employer's copy machine. The claimant made a copy of Tammy's timecard the night before. (Employer Exhibit Three.) The claimant put a copy of the timecard in an envelope in her desk, but forgot to remove the timecard from the copy machine. She noticed issues on Tammy's timecard where she had reported time she worked when she had not. The claimant wanted to give Tammy an opportunity to correct her timecard and if she did not the claimant would talk to Jeff Petticord about the discrepancies she noted on Tammy's timecard. Talking to Petticord about timecard issues was not unusual for the claimant to do.

On August 2, Jerry Hans participated in a fact-finding interview involving Terry Cooney, the claimant's boyfriend. The employer hired Cooney to work as-needed before he established a claim for unemployment insurance benefits. During the fact-finding interview, Cooney made a comment that the claimant told him his timecard was in the employer's timecard holder until he filed a claim for unemployment insurance benefits. The claimant did not participate at the fact-finding interview. While employee's timecards are in an open area for anyone to see and Hans did not personally consider Cooney's comment about his timecard as confidential information, Patterson and Wylie considered this confidential information. The claimant generated timecards for temporary employees and put the cards in the timecard holder for temporary employees. After Hans participated in the fact-finding interview, he had questioned the claimant's trust worthiness.

On August 3, the employer discharged the claimant for three breaches of confidentiality. The first occurred when Patterson learned the claimant knew Tammy received a raise. The second occurred when the claimant made copy of Tammy's timecard. The third breach of confidentiality was based on Cooney's assertion during a fact-finding interview that he did not have timecard in

the employer's timecard holder after he established a claim for unemployment insurance benefits. The employer suspected that the claimant went into Patterson's office after Patterson left work on July 19.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The primary issue that must be resolved in this case is the credibility or reliability of the evidence presented. Even though the employer believed the claimant talked to a co-worker about the co-worker's raise, the evidence does not support the employer's conclusion. The claimant credibly testified that she did ask Tammy about her raise. The claimant had no control over what Tammy told the claimant when she came back to work from her vacation. Since Tammy did not testify, the employer did not establish that the claimant violated the employer's policy about talking to co-workers about salaries and raises.

The timecard found in the copy machine is the second reason for discharging the claimant. While the finding of the timecard in the copy machine is suspicious, the claimant's testimony that it was not unusual for her to bring timecard issues to Petticord's attention was not disputed. The evidence does not establish that the claimant removed the copy of the timecard from the employer's office until after she was discharged is credible. By the time the employer discovered the timecard, the claimant's job was already in jeopardy. This is supported by the performance evaluation the claimant received on July 19 and the July 13 conversation when the claimant became upset and told Patterson she knew Tammy received a raise.

Since timecards are left in the open, an observation that the claimant, Cooney or anyone else made about when a timecard was in the timecard holder or not is not deemed confidential information. The employer did not establish that the claimant violated its breach of confidentiality policy.

The employer established business reasons for discharging the claimant. When the employer discharged the claimant, the employer did not trust the claimant and the claimant felt the employer did not treat her fairly. Based on the evidence presented during the hearing, the employer did not establish that the claimant intentionally or substantially disregarded the

employer's interests or standard of behalf the employer had a right to expect from her. The claimant did not commit work-connected misconduct. As of July 31, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's August 24, 2011 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of July 31, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs