

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORI A STANTON**

Claimant

**APPEAL NO: 12A-UI-10066-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CUSA ES LLC/EXPRESS SHUTTLE**

Employer

**OC: 07/08/12**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated August 9, 2012, reference 01, that held she was discharged for misconduct on July 12, 2012, and which denied benefits. A telephone hearing was held on September 12, 2012. The claimant participated with witnesses Janet Shepherd, manager, and Darin Plunkett, safety manager. The employer submitted Exhibits 1 and 2, which were received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment on March 31, 2011, and last worked as a full-time district manager on July 12, 2012. The employer discharged claimant for what it considered was unprofessional behavior toward a dispatcher on July 8. She had been suspended on May 4 for a seven-day period for retaliation against a driver who had reported her to the employer for unacceptable behavior.

The claimant denies inappropriate behavior in dealing with driver Davis and the dispatcher. Her witnesses did observe any behavior issues in claimant dealing with employer personnel. The HR department did not consult with claimant's witnesses as to whether she had behavior problems.

The employer closed its business prior to the hearing date. It submitted a representative written statement and written warning as evidence.

**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.

The administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on July 12, 2012, for inappropriate behavior.

The claimant and her witness testimony, subject to questioning by the ALJ, is given greater weight than the employment statement and document. In addition, the employer did not offer any written statement from driver Davis and/or the dispatcher to support its conclusion that claimant acted in an unprofessional manner. Job-disqualifying misconduct is not established.

**DECISION:**

The department decision dated August 9, 2012, reference 01, is reversed. The claimant was not discharged for misconduct on July 12, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw