

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA M KUNZ

Claimant

APPEAL NO: 11A-UI-13427-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPPORTUNITY VILLAGE

Employer

OC: 09/04/11

Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's October 3, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Elena Sassman testified on the claimant's behalf. Tina Leonard, Dena Shekey, and Justin Jones appeared on the employer's behalf. 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 that constitute work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2008. She worked as a full-time personal support professional. The employer's policy, healthy relationships, provides guidelines on how employees need to treat other employees and clients. During her employment, the employer counseled the claimant numerous times about the way she acted around co-workers and/or treated them. In early July 2011, after the employer received information that she made a derogatory remark about her supervisor, the employer transferred the claimant to another building. Jones then became the claimant's supervisor.

The claimant's transfer was the employer's attempt to give her a fresh start with co-workers and clients. On August 27, the claimant and Sassman attempted to drive some clients to a park for an outing. The claimant and Sassman got lost and did not get to the park. When the claimant came back from the outing on August 27, the supervisor understood that the claimant and Sassman actually were at the park with the clients. The claimant reported on documentation that she drove clients. Shekey understood the claimant had actually been at the park and asked her to add park to the documentation.

Later, Shekey learned the claimant and Sassman had not gotten to the park. The employer asked Sassman to correct her documentation to reflect the clients had been on drive. When the employer investigated this incident, co-workers reported various incidents where they reported the claimant had been rude to them by talking to them in a loud voice or by comments she made. The claimant admitted she upset one co-worker when she made a comment about religion. The claimant apologized to this co-worker for making a comment that offended her.

After receiving the co-workers' complaints, the employer concluded the claimant could not change and would continue being rude to her co-workers. The employer discharged the claimant on September 6 for failing to maintain healthy relationships with her co-workers and for falsifying documentation she completed for the August 27 outing where she got lost and did not take clients to a park.

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).

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(8).

The employer established business reasons for discharging the claimant. The claimant may have been difficult to work with. The current incidents complained about concerned the claimant's rudeness. None of the co-workers who reported the claimant had been rude testified at the hearing. Since rudeness is subjective, it is difficult to conclude the claimant intentionally violated the employer's healthy relationship policy.

If the claimant made an inappropriate comment about her supervisor, the employer may have established work-connected misconduct if the claimant had been discharged in early July instead of transferring her to another building. The claimant used poor judgment when she made religious comments that offended a co-worker, but she apologized after she realized what she had done. The facts do not establish there were any current incidents where the claimant intentionally violated the employer's healthy relationship policy.

The evidence indicates the documentation problem occurred because the claimant's supervisor believed the claimant and Sassman went to a park with clients when they had not. While the claimant could have corrected her supervisor's impression about the park, she followed her supervisor's instructions so the employer would not discipline her for questioning a supervisor. Since the documentation problem occurred as the result of incorrect conclusions, this incident does not rise to the level of work-connected misconduct. As of September 4, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's October 3, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit a current act of work-connected misconduct. As of September 4, 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/kjw