

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY N SALVIN
Claimant

APPEAL NO. 07A-UI-05136-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CALERIS INC
Employer

**OC: 05/07/07 R: 01
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 18, 2007, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on June 5, 2007. Claimant participated. Employer participated through Stacy Springer, Ashley Johnson, and Marilyn Gilleland.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time content moderator from October 23, 2006 until May 1, 2007, when she was discharged. She made threatening comments to coworkers on April 30, 2007, after Sarah Ratliff reported to management that Rebecca Chumbley saw nude photos on claimant's cell phone copied from a work computer. During the investigation, Chumbley reported to Johnson that she did not feel safe because claimant said to her, "The snitch is going to get her ass kicked in the parking lot." Chumbley asked employer for more security measures, such as walking her to her car. Nancy Turner also reported separately that she heard claimant say, "That fucking snitch will pay." Claimant had no response to the reports at the time of separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related misconduct.

Iowa Code § 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.

Whether or not the photos were of strangers or claimant and her husband, copied from the work computer or not, employer has an interest and duty in protecting the safety of all of its employees. Claimant's credible threat of physical aggression was in violation of specific work rules and against commonly known acceptable standards of work behavior. This behavior was contrary to the best interests of employer and the safety of its employees and is disqualifying misconduct even without prior warning. Benefits are denied.

DECISION:

The May 18, 2007, reference 02, decision is affirmed. The claimant was discharged from employment for reasons related to job misconduct. Benefits are withheld until such time as the claimant works in and has been paid for wages equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw