

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARCY D STORY
Claimant

APPEAL NO: 13A-UI-04220-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN GAMES INC
Employer

OC: 03/10/13
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's March 29, 2013 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 nondisqualifying reasons. The claimant participated in the hearing. Connie Hickerson represented the employer. Edwin Childers, the claimant's supervisor, Jennifer Paisley, the human resource manager, and Thomas Adams, the production manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not 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 August 2006. She worked full time in production. Childers supervised the claimant. The employer's policy requires employees with shoulder-length hair to tie back or put up their hair when working around machinery.

On March 13, 2013, Childers reminded the claimant to pull up or tie up her hair so it was above her shoulders. The claimant did this without questioning Childers. On March 14, when Paisley was walking through the plant, she saw the claimant, gave her a hair tie and asked her to pull up her hair. The claimant was upset because she believed Paisley singled out the claimant's department by requesting her to pull back or pull up her hair when Paisley did not require employees in other departments to do this. The claimant responded by telling Paisley she would not do this until Paisley had V., a supervisor in another department, pull back her hair also. The two engaged in a brief verbal confrontation. Before Paisley turned to leave she told the claimant, "I'm done discussing this," and walked away. When Paisley turned to leave, the claimant took out the hair clip she had and put up her hair.

The claimant made her comment because she was tired of other employees not being required to put up their hair. Paisley reported that the claimant refused to tie back her hair when Paisley asked her to.

Although the claimant received a written warning in September 2011 for making a disrespectful comment to a co-worker, her job was not in jeopardy prior to March 14, 2013. The claimant had not questioned or refused to put up her hair before. The claimant did not have any problems with Paisley.

On March 14, 2013, the employer discharged the claimant for being insubordinate to Paisley, a member of management, by disregarding her instructions and being disrespectful to her. The employer's policy defines insubordination.

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. *Casper 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's job was not in jeopardy before March 14, 2013. The claimant did not have any problems with Paisley and had not previously questioned management's instruction to pull back her hair. Given the fact her supervisor told her to pull back or tie up her hair the day before, the claimant's March 14 comment to Paisley was not warranted. If the claimant felt the safety rule of having shoulder-length hair pulled up was not uniformly carried out, she could have brought this to management's attention at a more appropriate time and manner.

Even though the claimant put up her hair after Paisley left, she told Paisley she would do not this until another supervisor was told to put up her hair also. The claimant's comment verbal, challenge to Paisley's request to put up her hair on March 14 amounts to work-connected misconduct. As of March 10, 2013, the claimant is not qualified to receive benefits.

An issue of overpayment and whether the claimant is eligible for a waiver of any overpayment of benefits she may have received since March 10, 2013, will be remanded to the Claims Section to determine.

DECISION:

The representative's March 29, 2013 determination (reference 01) is reversed. The employer discharged the claimant for reasons that amount to work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 10, 2013. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

The issue of overpayment and whether the claimant is eligible for a waiver of any overpayment of benefits she may have received since March 10, 2013, is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs