

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREA WHITT**  
Claimant

**APPEAL NO. 07A-UI-08151-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SALEM MANAGEMENT INC**  
Employer

**OC: 09-03-06 R: 01**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 23, 2007, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 10, 2007. The claimant participated in the hearing. Cyd Hall, Office Manager and Stacy Volk, General Manager, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time employee service representative for Salem Management from October 2, 2006 to July 23, 2007. The claimant's husband manages the local Wal-Mart. A pizzeria leases space in Wal-Mart and the claimant and her husband were eating dinner there one evening in July 2007 when the claimant noticed two former clients of Salem Management working in the pizzeria and commented to her husband that she knew the employees from her job and the pizzeria should do better screening and background checks. She said they were "a pile" and the pizzeria should rethink their hire. Soon after that both women were fired from the pizzeria and went to Salem Management to complain about the claimant's actions and threatened legal action and the employer terminated the claimant's employment for violating its confidentiality and trade secrets agreement (Employer's Exhibit A).

**REASONING AND CONCLUSIONS OF LAW:**

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

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.

As an employee of an employment agency the claimant had access to information about current and previous employees that would not be available to the general public or subsequent employers unless the new employer undertook to secure that information themselves. The employer has a very clear clause in the employment agreement that states employees shall not "at any time or in any manner, either directly or indirectly, divulge, disclose or communicate to any person, firm, or corporation in any manner whatsoever any information concerning any matters affecting or relating to the business of the Employer, including without limiting the generality of the foregoing, (i) the identity of its customers, clients and employees" and (IV) any other information concerning the business of Employer, its manner of operation, its plans, processes, or other data without regard to whether all of the foregoing matters will be deemed confidential, material, or important. The parties hereto stipulate that as between them the same are important, material, confidential and gravely effect the effective and successful conduct of the business of Employer and Employer's goodwill and that any breach of this paragraph shall be deemed a material breach of the Agreement and shall entitle the Employer to liquidated damages in the amount of Ten Thousand Dollars (\$10,000.00) plus any equitable/injunctive relief, or any other relief from a third party to which SMI may be entitled. The claimant had a duty to protect the confidentiality of the two pizzeria employees and should not have discussed the matter with her husband who was connected to the pizzeria through his position as manager of Wal-Mart. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

**DECISION:**

The August 23, 2007, reference 03, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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