

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

TATIANA M MOORE  
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WATERLOO IA 50703 3720

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Appeal Number: 06A-UI-06216-DWT  
OC: 05/21/06 R: 03  
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Tatiana M. Moore (claimant) appealed representative's June 12, 2006, decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Allen Memorial Hospital (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 7, 2006. The claimant participated in the hearing with her attorney, Cynthia Rybolt. Betty Reuter and Ken Leibold appeared on the employer's behalf. During the hearing, Claimant's Exhibit A and B were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 25, 2001. The claimant worked as a part-time tray assembler. Reuter was the claimant's supervisor.

Prior to May 16, 2006, the claimant received a couple of warnings for attendance issues. In accordance with the employer's policy if the claimant received another warning for an attendance problem, the employer would suspend her before discharging the claimant. Prior to May 16, the claimant had not refused to do a job a supervisor asked her to do.

On May 16, the claimant was the 6:45 employee and could leave work after a supervisor gave her permission to do so. After the claimant understood all her work was done, she asked Debbie Vivians, the employee in charge that day, if she could go home. Vivians indicated the claimant could leave as long as all of her work was done. The claimant understood all of her work was completed. As the claimant was leaving work to punch out, Vivians asked the claimant to take two trays that had not yet been filled. The claimant understood she had already received permission to leave. The claimant indicated she was leaving and another co-worker could take the trays. The claimant then continued to punch out and left work. The employer was not busy when the claimant left work.

The next day Vivians reported that the claimant refused to follow her direction. The claimant was not scheduled to work again until May 19, 2006. On May 19, the employer talked to the claimant about the May 16 incident. The employer concluded the claimant had been insubordinate to Vivians when she refused to take care of two trays and left work instead of following Vivians' instructions. The employer discharged the claimant on May 19 for the May 16 act of insubordination. In accordance with the employer's policy insubordination is subject to immediate dismissal.

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 section 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).

The employer established compelling business reasons for discharging the claimant. Based on information the employer received, the employer made a reasonable conclusion that the claimant was insubordinate to a supervisor on May 16 when she refused to take care of two trays and left work instead.

Since Vivians was not present at the hearing, the claimant's testimony is credible and must be given more weight than any information the employer relied upon based on Vivians' report of the May 16 incident. The evidence reveals the claimant received permission to leave work just before 2:00 p.m. on May 16. As the claimant was leaving, the employer asked the claimant to take care of two trays. The claimant's response was reasonable since the employer had already given her permission to leave work. The claimant may have used poor judgment when she indicated another employee could take care of the trays, but this isolated incident by itself does not amount to work-connected misconduct. According to the claimant, it would not have been unusual for her co-worker to take care of the trays when the claimant had already received permission to leave work. The claimant had no idea her job would be jeopardy if she did not take care of the trays before she left work on May 16. Under the facts of this case, the claimant did not intentionally disregard the employer's interests. The claimant did not commit work-connected misconduct. As of May 21, 2006, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's June 12, 2006 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of May 21, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs