

**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**

**CHRISTINE WARTH
1318 ½ N 8TH ST
BURLINGTON IA 52601**

**DORAN & WARD COMPANY
PO BOX 458
BURLINGTON IA 52601**

**Appeal Number: 04A-UI-05053-ET
OC 04-11-04 R 04
Claimant: Appellant (1)**

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 23, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 17, 2004. The claimant participated in the hearing. Denise Machholz, Human Resources Coordinator, Marge Getchell, Supervisor and Sudhir Pramanik, Plant Manager, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

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 production worker for Doran & Ward from March 10, 2003

to March 24, 2004. Human Resources Coordinator Denise Machholz and Supervisor Marge Getchell met with the claimant March 24, 2004, to discuss her employee evaluation. The claimant failed to meet the employer's expectations in four categories, required improvement in six others and performed satisfactorily in the remaining two. As Ms. Machholz started the review, the claimant became very defensive, rude, sarcastic and loud and Ms. Machholz told her she could respond when the review was finished but needed to listen to the employer's comments first. The claimant continually interrupted and after instructing the claimant to stop talking and listen at least three times without success, Ms. Machholz was unable to complete the review and terminated the claimant's employment for insubordination. The employer had talked to the claimant several times about her performance and attitude and the claimant admitted she had a bad attitude and that her attitude affected her attendance. The claimant previously received a verbal warning for failing to clock out during breaks and two written warnings and a suspension regarding her attendance.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant may have disagreed with her performance evaluation scores, her behavior when presented with the evaluation was inappropriate, unprofessional and insubordinate and served to illustrate some of the concerns the employer had about her workplace attitude and behavior. The employee evaluation form provided space for employees' to make comments about the evaluation, either in agreement or disagreement with the scores and statements contained within, and the claimant chose not to avail herself of that option, seemingly because she was in effect "out of control" with her anger and emotions as evidenced by the fact she could not refrain from interrupting Ms. Machholz when presented with the evaluation, even when Ms. Machholz told her that she was not going to tell her to be quiet again. The claimant had received previous warnings and a suspension and those warnings and the suspension put the claimant on notice that a further incident could result in termination. The claimant's actions March 24, 2004, were not an isolated incident and her 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. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct as defined by Iowa law. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The April 23, 2004, reference 01, 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.

je/kjf