

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANICE M BOYLES

Claimant

APPEAL NO. 06A-UI-11308-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GEORGE'S LAWNMOWER INC

Employer

**OC: 05/24/06 R: 04
Claimant: Respondent (1)R**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

George's Lawnmower (employer) appealed a statement of charges dated November 9, 2006, that concluded Janice Boyles (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 12, 2006. The claimant participated personally and through her husband, Greg Boyles. The employer participated by Kathy Wunderlich, Owner, and Gary Wunderlich, Owner's husband.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant's husband owned a business which was sold to the employer on or about May 19, 2006. The employer and the claimant's husband signed the agreement. The claimant did not. The agreement indicated that the employer could not employ either the claimant or her husband.

The claimant filed for unemployment insurance benefits with an effective date of May 21, 2006. Work was available for the claimant with the employer but the employer bound itself by contract not to employ the claimant.

After the sale of the business the claimant spent her time taking care of her ill husband and working to open a new business.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant did not sign the agreement not to work for the employer and so the claimant's separation from employment cannot be considered voluntary. The employer is unable to prove disqualifying job misconduct because the claimant never performed services for the employer.

The matter is remanded to the claims section to determine if the claimant is able and available for work.

DECISION:

The statement of charges dated November 9, 2006, is affirmed. The claimant is qualified to receive unemployment insurance benefits. The matter is remanded to the Claims Section to determine if the claimant is able and available for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css