

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

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Appeal Number: 05A-UI-08879-LT
OC: 07-24-05 R: 01
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)

Iowa Code §96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the August 19, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 14, 2005. Claimant did participate with Angelita Santos and was represented by Joe Basque, Attorney at Law. Employer did participate through Mike Caban and Ann Vorthman. The administrative law judge took judicial notice of the administrative record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time foreman in the KBD division through July 21, 2005 when she was discharged. On July 19, she had contributed to a hostile work environment when she took a private conversation with her supervisor, Theresa Malone, about another supervisor, Angelita

Santos and relayed the information incorrectly in retaliation the day after Malone wrote her up for an attendance violation on July 18.

Malone told claimant there was a rumor that Santos was sleeping with a sanitation guy and Santos needs to know about the rumor so she could address it. Instead, claimant reported the information to Santos as if it was Malone that was spreading the rumor. She told Santos on July 19 that on July 14 Malone had said something disparaging about Santos sleeping around with a sanitation guy and that made her late picking up her children from Malone's son even though it was claimant that was supposed to be sitting for Santos. Santos did not confront Malone about what claimant had told her even though she knew that Malone's son was caring for her children, but threatened to file a harassment suit against Malone and the company.

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).

While claimant accused Malone of spreading rumors (yes, Malone should have addressed the rumor issue with Santos directly), claimant herself not only spread the rumor but falsely made it appear to Santos that Malone was the source of the rumor. This did create a serious misunderstanding between the two supervisors which led to a threat of a harassment suit against the employer. Santos' version of the events is limited since she never spoke to Malone about what claimant had told her.

Claimant acted contrary to the best interests of both coworkers and the employer by spreading malicious gossip and misattributing the source in an attempt to create ill will between two supervisors. This was misconduct and benefits are denied.

DECISION:

The August 19, 2005, 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.

dml/kjf