

**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**

**HEIDI M STIERMAN  
1407 W GIBBONS RD  
NEW RIVER AZ 85087**

**CITY OF DUBUQUE  
50 W 13<sup>TH</sup> ST  
DUBUQUE IA 52001-4864**

**Appeal Number: 04A-UI-09280-BT  
OC: 07/25/04 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, 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 for Misconduct

STATEMENT OF THE CASE:

Heidi Stierman (claimant) appealed an unemployment insurance decision dated August 18, 2004, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from City of Dubuque (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 11, 2004. The claimant participated in the hearing. The employer participated through Randy Peck, Kathy Lamb and David Harris. Employer's Exhibits One through Four and Claimant's Exhibits A through C were admitted into evidence.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time lead paint inspector from February 23, 2004 through July 23, 2004. She was discharged for a repeated pattern of insubordination. Within a week or two after being hired, the employer requested the claimant provide a certified copy of her college transcript. The claimant initially refused to even make an effort to comply with this request since she questioned why the request was made and felt it to be an unreasonable request. She demanded to see a written policy allowing this type of request and the employer advised her that in her employment application, she authorized the City of Dubuque to make all necessary and appropriate investigations to verify information provided within that employment application. The employer repeatedly made the request to the claimant both verbally and in writing but the claimant took no action until she received a letter dated June 2, 2004, in which she was advised that her failure to comply with the employer's request by July 7, 2004 would result in her termination. Only then did she initiate a request for her transcripts from Northern Arizona University. After the university registrar's office informed the employer it had some internal difficulty providing the transcript, the employer extended the deadline date. The employer had not received the claimant's transcripts before she was discharged on July 23, 2004.

Another problem was when the claimant drafted or made revisions to a study guide for a lead paint course and refused to allow her supervisor's input. The claimant's supervisor needed to review the revisions before the guides were distributed and only became aware of the completed study guides after the claimant turned in the guides to be distributed. The employer was able to intercept the distribution. This occurred in late April or early May 2004 and the claimant was issued a verbal warning.

The claimant knew that the employer's policy required employees to obtain authorization before working overtime but she failed to do so for the pay periods beginning on May 7, 2004 and May 21, 2004. The claimant contends her supervisor warned her about it after she had worked the overtime. The employer gave the claimant the verbal warning on May 14, 2004. Another policy violation occurred when the claimant attended a HUD conference in Florida in June 2004. She was well aware of the employer's rules that "same sex staff expected to share a room." The claimant refused to share a room with another female the employer had sent to the conference. She justified her refusal because she did not know this employee and felt the policy was not applicable since the other employee was being paid by a grant instead of directly by the City of Dubuque. Subsequent to the conference, the claimant turned in \$423.72 in hotel expenses, which were denied by the employer. The claimant appealed the decision to the City Manager, who affirmed the denial.

The claimant sent an email to the Assistant City Manager on June 30, 2004 in which she complained that her pay rate was not what was promised to her. The Senior Housing Inspector initially spoke with the claimant about the starting rate of pay and misquoted the pay rate by providing the rate for the Housing Inspector OE-17 position instead of the rate for the Housing Inspector. The correct amount was \$17.50 per hour and the amount was stated as \$18.83. The Housing and Community Development Director contacted the claimant and provided her with accurate information and when the claimant signed her employment agreement, the pay rate was clearly stated to be \$17.50. The Director sent the claimant a memorandum reiterating this information on July 7, 2004. The claimant sent a subsequent email to the Assistant City Manager on July 12, 2004 in which she accuses the Director of going "to the extreme to lie so

boldly” and that “he is not a man of integrity and he does not care about the work environment at the Lead Department/Housing Division. She was discharged the following week.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code Section 96.5-2-a.

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 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 substantial and 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).

The claimant was discharged for insubordination. Although she denies all wrongdoing, the evidence demonstrates a pattern of ignoring employer policies and directives. She refused the request to provide her transcripts to the employer until the employer finally gave her an ultimatum. The claimant refused to allow her supervisor to review the study guides before she provided them for distribution. She knew the employer's policy requires employees to obtain permission to work overtime but failed to do this on two occasions. She refused to share a room at a conference with another female who was sent to the conference by the employer and then expected the employer to reimburse her for her hotel room. A reasonable person would know that the policy would apply to all individuals or staff members who were sent to the conference by the employer. She complained about her rate of pay four months after signing documents accepting that rate of pay. Additionally, she made derogatory and offensive comments about her supervisor. The employer has met its burden of proof. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated August 18, 2004, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount provided she is otherwise eligible.

sdb/kjf