

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**NATASHA L PIERSON**

Claimant

**APPEAL NO. 15A-UI-04357-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MONARCH SPA & BOUTIQUE LLC**

Employer

**OC: 03/15/15**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Monarch Spa & Boutique, LLC filed a timely appeal from a representative's decision dated April 7, 2015, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on May 12, 2015. Claimant participated. The employer participated by Amy McCall, Company Owner.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all the evidence in the record, the administrative law judge finds: Natasha Pierson was employed by Monarch Spa & Boutique, LLC from December 16, 2013 until March 10, 2015, when she was discharged from employment. Ms. Pierson was employed as a full-time esthetician and was paid by the hour. Her immediate supervisor was the company owner, Amy McCall.

On March 6, 2015, Ms. McCall called a meeting to inform employees that she was considering closing the spa and boutique because of poor business conditions. Prior to the beginning of the meeting, Ms. Breitbach, a full-time masseuse, and the claimant, stated that they were "considering" starting their own business in the future because of some issues that had occurred when the company owner had recently been absent from the business for an extended period. Although the claimant and other worker had not stated that they were quitting employment or set a date for leaving, Ms. McCall responded that she would be closing the facility and moving. Ms. McCall requested the claimant and other worker to remain until "the end of May," the date that appeared to coincide with Ms. McCall's intention to close the boutique and spa. Both the claimant and other worker agreed to do so.

During the following weekend, Ms. McCall considered the matter further and decided to end the employment of Ms. Pierson and the other worker prior to the end of May, believing that it was in her best interest to do so. Ms. McCall had observed two social media advertisements that had been placed by one of the employees soliciting customers for their business. The solicitations were for dates after Ms. McCall had announced that her business would close. Ms. McCall,

however, perceived that the claimant and other worker may have been making preparations to open their own business while they were still employed at Monarch Spa & Boutique and that they may have been using the employer's sources to order plaques for the new business that they were starting in the future. Ms. McCall was also concerned that the parties might solicit current employees to work at their new business.

By letter dated March 10, 2015, Ms. Pierson was informed that her employment was ending that day and the claimant was provided two-week dismissal pay at that time.

Ms. Pierson denies using Monarch Spa & Boutique's work time or sources to further the business interests that they planned to operate in the future. The claimant had planned to remain with the employer until the date that she had previously set for the business closing and did not engage in attempting to use products through the company or soliciting company employees for the purpose of opening their own business later.

### **REASONING AND CONCLUSIONS OF LAW:**

Based upon the evidence in the record, the administrative law judge concludes that the claimant did not quit her employment but was discharged by the employer. The claimant had only indicated that she and another worker were "considering" leaving their employment with Monarch Spa & Boutique, had not done so, nor set a final date of employment. The administrative law judge thus concludes that the claimant was discharged and did not voluntarily leave her employment. The next question is whether the evidence in the record establishes misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In discharge cases, the employer has the burden of proof to establish disqualifying misconduct. See *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Department of Job Service*, 425 N.W.2d 679 (Iowa App. 1988).

In the case at hand the claimant had not resigned her position with this employer but had stated only the possibility of quitting to open a new business while reviewing with the company owner a number of issues that had arisen while the owner had been gone for an extended period not providing management directive to the employees of the boutique and spa. In response to statements about considering leaving employment with the company, Ms. McCall then indicated that it was her intention to close the business at the end of May 2015, and indicated her desire to have Ms. Pierson continue in her employ until the date set by the employer. The employer later made a business decision to dismiss Ms. Pierson and the other worker because of the possibility that they may be attempting to solicit current employees while using company resources to further their own future business interests.

While Ms. McCall's decision may have been a wise decision from a management viewpoint, the evidence in the record does not establish that the claimant or the other worker were soliciting employees or were using company products or sources to further their business that they planned to open in the future.

The administrative law judge concludes based upon the evidence in the record that the employer has not sustained its burden of proof to show intentional disqualifying misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated April 7, 2015, reference 01, is affirmed. The claimant was dismissed under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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