

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TAMRA WILLIAMS

Claimant

APPEAL NO: 20A-UI-01136-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RYDER INTEGRATED LOGISTICS INC

Employer

OC: 10/13/19

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 23, 2020, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 24, 2020. The claimant participated in the hearing. Kathy Facione, Human Resources Manager, participated in the hearing on behalf of the employer. Department's Exhibit D-1 and Claimant's Exhibit A were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on January 23, 2020. The claimant did not receive the decision until approximately February 4, 2020, because she moved and left a forwarding address. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 2, 2020. That date fell on a Sunday so the appeal was due February 3, 2020. The appeal was not filed until February 7, 2020, which is after the date noticed on the disqualification decision. Because the claimant moved and did not receive the representative's decision until after the due date, the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time material handler for Ryder Integrated Logistics from July 27, 2017 to December 17, 2019. She was discharged because the employer believed a Facebook post she wrote was referencing the employer.

The claimant worked full-time for Ryder Integrated Logistics and had taken a part-time job November 14, 2019, with a local hair salon.

On October 28 and November 12, 2019, the claimant spoke to Payroll Processor Olivia Godfrey about an issue she was having with her paycheck. That issue was eventually resolved.

On December 11, 2019, a Ryder Integrated Logistics employee was looking at Facebook during her break and saw and reported this post from the claimant, "I'm so tired of this job fucking my damn checks up but they must like when I cuss them out. I'm a lose my whole job cuz I'm a calling them bitches to their face. Tomorrow you bitches better stop fucking playing with my fucking money for I turn this MF to the post office so I probably won't have a job after tomorrow but I'm cool with that."

The employer met with the claimant December 12, 2019 and read the Facebook post to her. The claimant admitted writing it but said it was about her other job at the hair salon not Ryder Integrated Logistics (Claimant's Exhibit A). The claimant was argumentative and the employer was especially concerned about the reference to the post office. The claimant said "A lot of good things have happened at the post office and a lot of good things like health care started there" which left the employer more confused. The claimant became more argumentative and the employer ended the conversation and put the claimant on a paid suspension. The employer terminated the claimant's employment December 17, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proving disqualifying misconduct. *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 testified her Facebook post was referring to the problem she was having getting paid by the hair salon where she worked part-time and not about her full-time employer Ryder Integrated Logistics. She did provide copies of her conversation with the owner of the hair salon which support her testimony. The claimant referenced the post office in her Facebook post and did so in a threatening manner and then disavowed any knowledge of what the term "going postal" means even though she said "bitches better stop fucking playing with my fucking money for I turn this MF to the post office." The claimant's explanation that "a lot of good things have come out of the post office" was not credible.

However, the employer could not provide the date of the post or state with certainty the claimant was referring to Ryder Integrated Logistics. It is just as plausible, if not more so, that the claimant was writing about the hair salon employer as is suggested by the subsequent posts between the claimant and Ms. Symone.

Under these circumstances, there is not enough evidence to find the claimant wrote the inappropriate Facebook post about the employer rather than the hair salon and therefore benefits must be allowed.

DECISION:

The January 23, 2020, reference 03, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn