

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSEMARY A GIESEL
Claimant

APPEAL NO. 07A-UI-06990-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOOLEY'S INCORPORATED
Employer

**OC: 06/17/07 R: 03
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Rosemary Giesel, filed an appeal from a decision dated July 11, 2007, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 1, 2007. The claimant participated on her own behalf. The employer, Dooley's Incorporated (Dooley's), participated by Owner Shane Dooley. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Rosemary Giesel was employed by Dooley's from February 16, 2004 until June 15, 2007, as a full-time office worker. She received the employee handbook and the progressive disciplinary policy calls for discharge after an employee receives three written warnings in a calendar year.

Ms. Giesel received written warnings on June 8, 11 and 14, 2007, for failure to do her job duties as required. She had failed to send product samples to a customer so they could be included in the yearly catalog, she wrote an e-mail to a customer, Meijer, incorrectly informing it that all items shipped under two different purchase order numbers and did not have UPC labels when, in fact, only 17 or 18 boxes of one particular product did not have them. The customer was a new one and had been seriously alarmed at the possibility of an entire shipment worth over \$20,000.00 was not useable.

The third incident was on June 14, 2007, when this same customer notified Owner Shane Dooley that two different UPCs had been assigned to the same item. The contract between Dooley and Meijer allowed the customer to deduct up to \$5,000.00 from money it owed for each UPC error. Ms. Giesel had corrected UPCs on at least three other items but could not confirm the UPC on this one item had been corrected and the customer notified. She and Jackie, the office manager, went through all the documentation and correspondence between the employer

and the customer and could not find any proof that the customer had been notified of the change.

The final incident was written up by Mr. Dooley and discussed with the claimant. The next day he notified her that she was discharged.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant knew her job was in jeopardy because she had already received two written warnings. The previous warnings were due to failure to perform her job duties as required, not sending out samples and not properly notifying the customer of the one item in a much larger shipment which did not have UPC labels.

The third incident was another failure to properly notify the customer of a change in a UPC number which exposed the employer to a potential loss of \$5,000.00 per item. The claimant's assertion that she had sent a corrected worksheet to the customer as an e-mail attachment lacks credibility as she and the office manager together examined all correspondence when the complaint was first made and found nothing to confirm this. The record establishes the claimant was guilty of negligence to such a degree of recurrence as to constitutes willful acts. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of July 11, 2007, reference 01, is affirmed. Rosemary Giesel is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css