

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIELLE M THURN**  
Claimant

**APPEAL NO. 13A-UI-12580-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE BUTTERCUP FLORAL & GIFTS**  
Employer

**OC: 10/06/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The Buttercup Floral & Gifts filed a timely appeal from a representative's decision dated October 30, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on November 27, 2013. Claimant participated. Participating as a witness for the claimant was her father, Robert Hackbarth. The employer participated by Mr. Michael Schmitz, Co-Owner; Karen Schmitz, Co-Owner; and Mr. Nolan Knight, Delivery Driver. Employer's Exhibits One through Six were received into evidence. Claimant's proposed exhibits were read into the record.

**ISSUE:**

The issue is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Danielle Thurn began employment with The Buttercup Floral & Gifts in September 2001. Ms. Thurn was most recently employed as a part-time manager averaging 20 to 32 hours per week and was paid by the hour. Her immediate supervisor was Ms. Karen Schmitz, Co-Owner/Manager. Ms. Thurn was separated from her employment with The Buttercup Floral & Gifts on October 10, 2013 when the employer concluded that Ms. Thurn was in the progress of opening her own floral business in a nearby building and would be in competition with The Buttercup Floral & Gifts.

On October 10, 2013, the claimant was summoned to the employer facility after the employer had received information regarding the start-up of Ms. Thurn's new business. At that time the company co-owners made statements to Ms. Thurn questioning her integrity and truthfulness about plans to open a competing business. Before the claimant had arrived that day, the employer had gathered Ms. Thurn's personal belongings and made them available to Ms. Thurn

for her removal. When the claimant asked if she should report to work to assist in floral arrangements for an upcoming wedding, the employer did not respond, and the claimant concluded that she was being discharged from employment. Ms. Thurn performed no further services for this employer.

It is the employer's position that the claimant was not terminated, but instead laid off work until the employer could make proper security arrangements to protect its proprietary information, customer lists, banking records and other pertinent information that the employer did not want to share with a potential competitor.

On October 23, 2013, the employer sent repetitive e-mails to Ms. Thurn informing her that the employer had made the security safeguards that it deemed appropriate and recalling the claimant to work for reinstatement with the company. The employer also sent the claimant a certified letter with return receipt requested with the same information. The claimant, who believed that she had been terminated, did not respond to the employer's notifications. The claimant filed a claim for unemployment insurance benefits and began looking for work while continuing to make preparations to begin her own floral business.

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct 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.

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.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The employer has the burden of proof in establishing job disqualifying misconduct. 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. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not always serious enough to warrant a denial of unemployment insurance benefits. Such misconduct must be “substantial.”

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

The administrative law judge concludes based upon the totality of the evidence in the record that the employer’s intention was to discharge Ms. Thurn on October 10, 2013 after the employer learned that Ms. Thurn was in the process of establishing her own floral business in competition with her employer. In addition to not allowing the claimant to continue to perform services for the company at that time, the employer gathered the claimant’s personal belongings for her removal, an act that is consistent with discharge from employment.

Having concluded the claimant was discharged, the next question before the administrative law judge is whether the evidence in the record establishes that the claimant’s conduct was intentionally of such disregard of the employer’s interests and standards of behavior so as to warrant the denial of unemployment insurance benefits. The employer by its own testimony establishes that the evidence in the record is not sufficient to find disqualifying misconduct in connection with Ms. Thurn’s employment.

The employer after becoming fully apprised that the claimant was making preparations to open a store in competition with them and having reviewed the matter elected to allow the claimant to resume employment after making some internal security changes.

By offering to reinstate or rehire the claimant, the employer establishes that they did not believe the claimant's previous conduct to be sufficient to warrant discharge and, therefore, made repeated offers to rehire or reinstate Ms. Thurn.

The employer subsequently concluded that the claimant's conduct did not warrant discharge from her employment. The administrative law judge does not disagree with the employer's conclusion. Because the employer concluded the claimant's conduct did not warrant discharge from employment, the administrative law judge concludes that misconduct sufficient to warrant the denial of unemployment insurance benefits has not been established. Unemployment insurance benefits are allowed providing that the claimant meets all eligibility requirements of Iowa law each week that she claims unemployment insurance benefits.

**DECISION:**

The representative's decision dated October 30, 2013, reference 01, is affirmed. The claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law each week that she claims unemployment insurance benefits.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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