

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA S NEEDHAM
Claimant

APPEAL NO. 13A-UI-07835-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRESTON FARM & HOME SUPPLY
Employer

OC: 06/09/13
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Donna Needham, filed an appeal from a decision dated June 27, 2013, 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 12, 2013. The claimant participated on her own behalf with Mary Jane Narigon, Larry Oswald and Laurie Girard. The employer, Creston Farm and Home Supply, Inc. (Farm and Home), participated by Vice President Jeff Mostek.

ISSUE:

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

FINDINGS OF FACT:

Donna Needham was employed by Farm and Home from August 18, 2012 until June 12, 2013 as a full-time head cashier. On June 12, 2013, Vice President Jeff Mostek received a call from Lonnie Nielson. Mr. Nielson was an employee of Green Valley Pest Control, a customer of Farm and Home.

Mr. Nielson complained Ms. Needham had been telling his co-worker, when they were in the store, he was a "registered sex offender." Mr. Mostek contacted the owner of Green Valley Pest Control, Dave Jennet, and asked him about the complaint. Mr. Jennet said he had heard about the incident from other employees and gave the employer their names and phone numbers. Mr. Mostek called at least two of the other employees and at least one confirmed he had heard Ms. Needham saying Mr. Nielson was a sex offender.

Mr. Mostek questioned Ms. Needham later that day. She admitted talking to other Green Valley Pest Control employees when they were in the store, but denied saying Mr. Nielson was a sex offender. She did admit to saying he was a child molester and a thief and they should know about it to protect themselves and their children.

Mr. Mostek discharged the claimant for making statements to customers on non-business related topics and possibly libelous or slanderous statements.

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.

Whether or not Mr. Nielson is, as accused, a child molester and thief is not the issue. If the claimant had concerns about these matters there were other avenues she could have taken, such as talking to the police, Mr. Mostek or Mr. Jennet about her concerns privately. Instead she chose to make these accusations to customers, publicly, while on duty and to individuals who were in no way involved in any of the decisions making which might have to be made as a result of the information.

The claimant's conduct was willful and deliberate and jeopardized the employer's relationship with a customer. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of June 27, 2013, reference 01, is affirmed. Donna Needham is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs