

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**KAREN M MATTES  
827 – 26<sup>TH</sup> ST  
DES MOINES IA 50312**

**HOME RECYCLING EXCHANGE INC  
805 SE 14<sup>TH</sup> CT  
DES MOINES IA 50317 1011**

**Appeal Number: 04A-UI-04526-H2  
OC 01-25-04 R 02  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 13, 2004, reference 05, decision that denied benefits. After due notice was issued, an in person hearing was held on May 10, 2004 at Des Moines, Iowa. The claimant did participate. The employer did participate through Lyle Ball, Executive Director. Claimant's Exhibit A was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an administrative assistant and outreach worker full time beginning April 1, 2003 through March 19, 2004 when she was discharged. The claimant told coworkers and a number of other individuals that she believed Mr. Ball to be incompetent, mentally ill, and

that he was running the recycling center in a manner that was incompetent. The claimant believed that she was helping the employer find funding by making complaints to others outside the organization. The complaints the claimant was making were to the point where the individuals she was seeking help from called the employer to recommend her discharge.

The claimant was unhappy that the employer would not cut her a paycheck immediately instead of waiting for the regular payday. The claimant presented a time sheet on the Wednesday prior to her termination demanding immediate payment because her cat was ill. The regular payday for the employer was Friday. The claimant became upset when the bookkeeper would not pay her at once. She picked up the employer's phone, called her brother and began telling him that the employer was refusing to pay her. The employer was only refusing to pay the claimant prior to the regular payday.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has a right to expect employees to conduct themselves in a particular manner. The claimant was badmouthing not only Mr. Ball but also the Home Recycling Exchange itself to members of the community, members of the Board of the Directors as well as coworkers. The persons to whom she made the complaint were so upset by the nature of her complaints that they notified Mr. Ball and reported the comments she was making. The claimant made statements about the mental capacity of Mr. Ball as well as his ability to manage the business. It was not the claimant's place to make disparaging comments about the executive director. The claimant should have taken her concerns to Mr. Ball. The claimant's actions, that is making disparaging personal and professional comments to others about Mr. Ball, constitutes sufficient misconduct to disqualify her from receiving benefits. Benefits are denied.

DECISION:

The April 13, 2004, reference 05, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

tkh/s