

**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**

**JILL KOELE
1117 – 6TH ST
HULL IA 51239**

**GROSCHOPP INC
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**Appeal Number: 05A-UI-06802-B
OC: 06/05/05 R: 01
Claimant: Respondent (2)**

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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96 5-2-a – Discharge for Misconduct
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Groschopp, Inc. (employer) appealed an unemployment insurance decision dated June 20, 2005, reference 01, which held that Jill Koele (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Sioux City, Iowa on November 2, 2005. The claimant participated in the hearing with her representative, Richard Sturgeon. The employer participated through Connie Vander Ploeg, Vice-President Human Resources; Jan Johnson, Supervisor; Jack Bradshaw, Manufacturing Manager; and Attorney James Hanks. Employer's Exhibits One through Six were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time manufacturing technician from June 26, 2000 through June 1, 2005. The employer manufactures fractional horsepower motor parts and has approximately 225 employees. The claimant was discharged for unacceptable conduct that created a hostile work environment for her co-workers. Her actions were in violation of the employer's mutual respect and acceptable conduct policies. She had been previously warned on December 3, 2003 about creating an intimidating, hostile and offensive work environment. The warning advised the claimant that any further incidents of that nature would result in termination.

The supervisor was absent on May 27, 2005 and when she returned to work on May 31, 2005, a very upset employee went to her and complained about the claimant's conduct on May 27, 2005. The claimant repeatedly called this employee a bitch and harassed her for no obvious reason. The supervisor went to human resources with the complaint and the employer began an investigation. It was determined that the claimant's co-workers generally felt the claimant created an intimidating and offensive work environment. Most of the co-employees were not willing to speak directly with human resources about the claimant because they were afraid of her.

The co-employees felt the claimant was verbally abusive, used profanity excessively, always appeared angry, gave dirty or intimidating looks, slammed boxes, scared employees by walking up behind them or pulling their hair, smashed co-workers' chips or poked their sandwiches, and confronted others if they looked at her. The claimant flatly denied all wrongdoing but provided no further information and was subsequently discharged.

The claimant filed a claim for unemployment insurance benefits effective June 5, 2005 and has received benefits after the separation from employment in the amount of \$3,120.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for creating a hostile and offensive work environment. Her supervisor suspected problems as a result of the claimant's behavior but did not take any action until after receiving a specific complaint. The claimant's co-workers generally felt the claimant was abusive and they were afraid of her. The claimant denies any wrongdoing but admitted if a person acted like it was reported she had, it would be offensive, although she also stated she does not care if people use vulgar language around her. When the claimant was asked why her co-workers would have made these complaints had they not been true, she stated that they did not like her. She further testified that her friends did not provide supportive comments of her because they were afraid something might happen to them. The preponderance of the evidence persuades the Administrative Law Judge the claimant was creating a hostile work environment. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment

compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated June 20, 2005, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$3,120.00.

sdb/kjf