

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANETTE E LOOPER
Claimant

APPEAL NO. 09A-UI-11740-N

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

WINGS AMERICA TRAVEL CENTRE
Employer

**Original Claim: 06/28/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Janette Looper filed a timely appeal from a representative's decision dated July 31, 2009, reference 01, which held her ineligible to receive unemployment insurance benefits. After due notice was issued, a hearing was held in Council Bluffs, Iowa, on September 2, 2009. Ms. Looper participated personally. Although duly notified, the employer did not participate.

ISSUE:

At issue is whether the claimant was discharged for 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: Janette Looper was discharged from employment on July 2, 2009, following her attempt to enforce the company's rules that prohibit employees from wearing "piercings" while performing their duties.

The claimant had attempted to enforce the company's rules with hourly employees that day after observing them violating the company rule. The employees were unwilling to follow Ms. Looper's directives and apparently complained to management. Subsequently, the claimant was confronted by her manager and was questioned regarding her conduct toward the other employees.

An exchange ensued when Ms. Looper's manager seemed to be upset at the claimant's enforcement of rules. Ms. Looper responded in kind on one occasion after inappropriate language had been directed toward her by her supervisor, whereupon the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes sufficient misconduct on the part of the claimant 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employer. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer fails to furnish evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this case, the claimant appeared personally and provided sworn testimony denying that she had been intentionally insubordinate. Ms. Looper testified that she was attempting to enforce the company's dress code to the best of her abilities and that she only replied in the same manner on one occasion after the claimant's supervisor became upset and directed angry, inappropriate language toward her.

The question before the administrative law judge in this case is not whether the employer has a right to discharge an employee for these reasons but whether the discharge is disqualifying

under the provisions of Iowa Employment Security Law. While the decision to terminate Ms. Looper may have been a sound decision from a management viewpoint, intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated July 31, 2009, reference 01, is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw