

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA K FREERKSEN
Claimant

APPEAL NO: 06A-UI-06188-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN REPUBLIC INSURANCE CO
Employer

**OC: 05/14/06 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge for Misconduct

STATEMENT OF THE CASE:

American Republic Insurance Company filed a timely appeal from an unemployment insurance decision dated June 6, 2006, reference 01, which allowed benefits to Lisa K. Freerksen. After due notice was issued, a hearing was held in Des Moines, Iowa, September 13, 2006, with Ms. Freerksen participating and being represented by Nathaniel R. Boulton, attorney at law. Exhibit A, the employer's appeal letter, was admitted into evidence on the claimant's motion. Mary E. Funk, attorney at law, appeared on behalf of the employer. Sales Administration Vice President Bob Lochard and Sales Development Vice President Jeff Holloway testified. Employer Exhibits 1 through 5 were admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with her work?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Lisa K. Freerksen was employed by American Republic Insurance Company for approximately 15 years prior to her discharge on May 17, 2006. She last worked in management. She had never received a prior warning or other discipline.

A few days before the discharge, Jeff Holloway, the claimant's former supervisor, told her present supervisor, Bob Lochard, that he had been surprised to see Ms. Freerksen in Phoenix, Arizona, on business. He did not know why she had been there. Ms. Freerksen had traveled to Phoenix, Nashville, Kansas City, Chicago, Madison, and two locations in North Carolina in the spring of 2006 on company business related to the shutting down of an enterprise known as "Entrecore." These trips were part of Freerksen's duties. She submitted travel vouchers for her expenses for these trips. She both prepared and approved the vouchers personally. While this violated of written company policy, it was consistent with past practice. Ms. Freerksen had approved her own travel vouchers for the past five years, including the time she was supervised by Mr. Holloway.

Indecorous language, including variations on the word “fuck,” is used at the company. Both Ms. Freerksen and Mr. Holloway were among those who used the language. Neither had been disciplined for doing so. Shortly before the discharge, two employees complained to Mr. Lochard about Ms. Freerksen’s language. One of the employees also expressed concern that Ms. Freerksen disapproved of the employee’s FMLA leave for her pregnancy.

Mr. Lochard did not discuss any of these issues with Ms. Freerksen. He summarily discharged her on May 17, 2006. Ms. Freerksen had received a 20 percent pay raise when she went to work for Mr. Lochard on January 1, 2006. She had received an additional three percent pay raise in March of 2006.

The employer’s appeal letter (Exhibit A) asserted that the reason for discharge was the claimant’s language and treatment of her subordinates. Neither of the subordinates was called to testify. The focus of the employer’s evidence was her business travel to Nashville and Phoenix.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant’s discharge was for misconduct in connection with her work. For the reasons which follow, the administrative law judge concludes that 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. See Iowa Code section 96.6-2. While hearsay evidence is admissible in contested case proceeding such as this, an administrative law judge is not required to give hearsay the same weight as evidence submitted by individuals with firsthand knowledge. In fact, an administrative law judge infer that the failure to present the best evidence from firsthand witnesses is a deliberate decision designed to avoid revealing deficiencies in a party's case. The hearsay testimony presented by Mr. Lochard concerning the claimant's treatment of subordinates does not establish willful misconduct. The claimant denied any intent to intimidate her subordinate over the use of FMLA leave. Mr. Holloway acknowledged that he himself had used similar language with no consequence other than an apology.

Mr. Holloway also acknowledged in testimony that Ms. Freerksen has approved her own travel vouchers while under his supervision. The claimant testified without contradiction and without cross examination on the point that she had approved her own travel vouchers for a period of five years. The administrative law judge finds that it was not misconduct for the claimant to continue to follow past practice by approving her travel vouchers for the travel to Nashville and Phoenix. The employer offered no evidence, only conjecture that the trips to Nashville and Phoenix were unnecessary. The claimant offered testimony without contradiction and without cross examination on the issue of the business reason for the trips. Furthermore, as noted above, there was no mention of the business trips in the employer's appeal letter.

The administrative law judge concludes that the employer has failed to establish that the claimant was discharged for misconduct in connection with her employment. Benefits are allowed.

DECISION:

The unemployment insurance decision dated June 6, 2006, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw