

Iowa Department of Inspections and Appeals  
Administrative Hearings Division  
Wallace State Office Building, Third Floor  
Des Moines, Iowa 50319

---

Trudi Snyder,	)	DIA Case No. 18IWDUI0033
	)	IWD Appeal No. 17A-UI-12288
Appellant,	)	
	)	
v.	)	<b>ADMINISTRATIVE LAW JUDGE</b>
	)	<b>DECISION</b>
Iowa Workforce Development,	)	
	)	
Respondent.	)	OC: 11/05/2017
	)	Claimant: Appellant (2)
	)	

---

Iowa Code §§ 96.5(2)  
871 Iowa Administrative Code (IAC) 24.32; 871 IAC 26

**Statement of the case**

Trudi Snyder filed an appeal from a decision issued by Iowa Workforce Development (IWD) dated November 22, 2017 (reference 01). In this decision, IWD concluded Appellant was not eligible to receive unemployment insurance benefits because she was discharged for violation of a known company rule.

The case was transmitted from IWD to the Department of Inspections and Appeals to schedule a contested case hearing. A Notice of Telephone Hearing was mailed to all parties on December 15, 2017. On January 16, 2018, a telephone appeal hearing was held before Administrative Law Judge Amanda Atherton. Nicholas Olivencia represented IWD. Scott Perkins and Justin Knudson, both of IWD, testified on behalf of IWD. Appellant represented herself and testified on her own behalf and when called by IWD.

IWD submitted Exhibits 1 through 147 (each page is designated with its own exhibit number). These documents were admitted into the record without objection.

### Issue

Whether IWD properly determined that Trudi Snyder was ineligible for unemployment insurance benefits because she was discharged by IWD for misconduct in connection with her employment.

### Findings of fact

Appellant has worked at IWD since 2010. She became a training specialist in July of 2016. (Perkins testimony; Exh. 26.) She typically has four or five individuals in her training sessions on any given day. The trainees are usually people who have been employed with IWD for a while, sometimes even years, but are new to their particular positions. (Snyder testimony.) When she got the job, she was told on two separate occasions that she would be seen as a leader in her new role and that management needed to be impartial. (Exh. 138.)

During a training on August 15, 2017, Appellant made comments about her interactions with the Director of IWD while working at the Iowa State Fair, at which she was representing IWD. There were some technical issues getting the training call set up and the comments were made while that issue was getting sorted out:

Trainee: So how did you[r] day go at the [Iowa State] Fair yesterday?

Appellant: Better than it could have if the director [of IWD] had been there all day because she ended up only being there for about five, maybe ten minutes, and it felt like ten hours when she was there (laughter).

\* \* \*

Okay. Ah no, I was out at the Fair Saturday with me and my daughter. And I wanted to find where I needed to be Monday morning so that I wasn't quite so lost, and I thought being [as] I'm out there anyway, um, so I found the location and darned if she wasn't there and everybody stood [sic] there - sounded - looked just like, truthfully, miserable. And in the - when she came by yesterday, she came by, she was attending the Fair as opposed to working the Fair, and I was told that she was supposed to be coming in later in the afternoon and they, ah, the person who, you know, said that, you know, you could tell that she was just absolutely thrilled with the idea her being there (laughter). But, you know, she swooped in and we have probably the whole booth was probably 32 foot wide, so they had about 10 feet - 10, 12 feet on one side that had a backdrop that just said Future Ready Iowa over and over and over again in rows and, you know, just a space between. And at the top it had the whole Future Ready Iowa, and the email saying. And then on the other

side, there was about 10, 12 foot of what they'd made into, like, a chalkboard, and you were supposed to go in and on one board in front of the Future Ready Iowa backdrop, they had a bunch of props on a table at the end and you would hold up a little sign. You could have a – like a chef's hat and, you know, there was a blackboard that said, E equals MC squared, and you know, there's just all kinds of cute little things that you could put together and, you know, really it was geared towards, um, children and, you know, maybe teenagers. There were a lot of adults that did it too. Um, and then on the other end after you get you – do your little selfie, and if you don't have a phone, well, use one of ours and then delete it, um, but, ah, there was a little kiosk thing that you could – it was just a little computer that's strapped on to the desk that we were at, and you put in your email address so you could get emails from the Future Ready Iowa, ah, Program.

\* \* \*

But anyway as she swooped in, we were, like, totally swamped with people everywhere and she looks at me and tells me, okay, guys, remember to get out of your spreadsheets before you come down here.

\* \* \*

Um, so anyway, she, ah, she comes in and she just looks at me and – it was a direct order. Make no mistake. I've been in the military. I know a direct order when I get one. And I was ordered to clean the, ah, chalkboard because it was full – it was too full.

\* \* \*

And there's all these people. I got people standing in front of me. She's standing behind the four people that are standing at my desk, and she's ordering me to clean the chalkboard, and I'm thinking I've got people in front of me here. It's going to have to wait a moment.

\* \* \*

But anyway throughout the (inaudible) the Director came in and ordered me to clean the chalkboards. There was a group of people there in front of me, and I'm like, okay. I have no idea where to even get anything to clean the chalkboard, and I'm looking for R[.] and I say her name and she – I'm looking around and finally I called out rather loudly (laughter) R[.]'s

name, and the Director looked at me and she says there's towels behind the wall.

\* \* \*

And honest to God it was like reverting back to being in the military because I went to that starched back, my head came up, my chin came down, and I'm like, oh (laughter). And I walked behind, and I got it, and she walked to where I had been, and I went and cleaned off the board and came back over and, um, when I got it done, I put everything back, and she was still standing behind the podium taking over, and so I just kind of stood off to the side with the one girl who was doing the selfies, and next thing I know, she just disappeared back into the crowds when everything – and I was just, like, good. She's gone. And I'm like, I will never –

\* \* \*

– I will never volunteer again.

\* \* \*

I will never volunteer again because she was just rude. She was obnoxiously rude. I'm, like, excuse me? I'm not in the military anymore (laughter). That ship sailed. [Exhs. 14-21, 45.]

During another training session, on September 12, 2017, Appellant made comments about another IWD employee. "Voice" is used to denote when the transcriber could not tell who was speaking:

Trainee: Does that go to [K.C.]?

Appellant: Yes. Unfortunately. Good luck.

\* \* \*

Jesus Christ (laughter) – like every time you send something to her or something (inaudible) –

\* \* \*

The one that we finished last – in here last Thursday, ah, for the [redacted]. It was the [redacted], whatever, that closed down two units and went to one. By the time we got out of here at [n]oon, we went upstairs, and when I got back from lunch, um, I was told that we had to go back and redo it,

and it was wrong because [K.C.] had gotten the manual fixed or gotten something on it, and they were going back and saying they couldn't do it because it's payrolling and it's this and it's that, and it made absolutely no (inaudible) sense.

Trainee: What happened is [K.C.] had gotten an email from him, from the owner. Somehow she got involved instead of passing on to – or attaching to the (inaudible) who was working on it she just said she wanted to nicely say stick – I don't know how to say it nicely, but stick her nose into it.

Voice: Stick her nose into it. Started doing all of this hunting in the Iowa Codes and all this other stuff, which I'm like it's (inaudible conversation).

Voice: If people have all this time, they need to have more work. If they're really trying to dig enough into other people's business.

Voice: You guys, she doesn't like me, okay?

Voice: (Inaudible) – yeah.

Voice: – some people you just rub the wrong way. I don't know if she tried to get this job or not.

Trainee: She did. I heard.

Appellant: Okay. Maybe that's where the animosity stems from. Nonetheless, she may know how to do the job, and I don't doubt that she knows how to do the job. She does not like me, and she has no people skills.

\* \* \*

– if this is me being rude and inappropriate, but I'm not a manager, and I can be honest. And the fact of the matter is, is she does not have any people skills. If you question her on whether or not she's right or wrong, she will, like, turn redder than her head, and just get totally flustered and has no good way to articulate other than – I mean she's got – she is the – this is my way or the highway, and this is the way you always have to do it. Trust me, you guys would all have been miserable. Everybody – all 14,

15 people that have come through in the last year and been trained would be – would have quit by now. And –

\* \* \*

I've thought about quitting because of her.

Trainee: And what needs to happen –

Voice: Stay out of it.

Trainee: – my previous jobs is management (inaudible) – mind their own business.

Appellant: Management won't. I have requested a meeting through management with my manager, her manager, and the bureau chief. Because she walks right over, talks with her own manager, and my manager and goes directly to the bureau chief, which is inappropriate. I'm about this far away from requesting an audience with [R.W.] saying either [T.] needs to make him do that or take the position away from me and put me back to (indiscernible) because apparently you guys don't have any confidence in me, and I'm tired of having everything that I do second-guessed. [Exhs. 22-25.]

Appellant had had conversations with some of the other unemployment tax managers about problems within IWD. She felt that if those managers were having those conversations with her, it was not inappropriate to have them with trainees. (Snyder testimony.)

The conversations made some of the trainees uncomfortable. (Exhs. 5-6, 8-9, 11-12.) Some of the trainees also reported other comments Appellant made. On one occasion, Appellant brought up the fact that her daughter was home-schooled because she had previously been in a school with a lot of minorities who were beating her up every day. She referred to them specifically as Asians, black people, Mexicans, etc. (Exhs. 4, 28-29.) The point of her story was that another child who was not white had stepped in to help her daughter, and it helped her daughter appreciate that there were "good and bad people in all colors." (Exh. 63.) Another employee then chimed in with a story about a club in Florida that did not allow "n-words." The trainees thought this conversation was inappropriate, but did not believe Appellant was expressing any racist or discriminatory views. They were more offended by what the other trainee had said, but they did believe it was Appellant's responsibility to have reined in the other trainee when the conversation got off-topic and inappropriate. (Exhs. 5-6, 8-9.) Another time, Appellant mentioned her ex-husband was racist and she was aware of it, explaining he would not let their daughter watch a certain cartoon because there were black

characters in it. (Exhs. 5, 31.) Appellant also spent twenty to thirty percent of the training time discussing non-work-related topics. (Exhs. 4, 11, 29.)

Justin Knudson is an Unemployment Tax Manager. Appellant had worked in his department the whole three years he had had that job. She used to report directly to him, but did not at the time these incidents took place. After Knudson received a complaint about Appellant's conduct during the training calls, he decided it would be appropriate to investigate. (Knudson testimony.)

Before the investigation began, two other incidents occurred. First, on September 25, 2017, when Appellant went into work, she stopped to see Scott Perkins. This was before she clocked in for the day. (Perkins testimony.) Perkins is an Unemployment Tax Manager. She asked Perkins if employees were still required to swipe their badges upon entering now that there was also a policy in place to have them log on to their voicemail upon arrival. Perkins told her the badge-swiping policy had not changed. She responded that IWD was like the Gestapo. As she walked away, she said, "Heil Hitler."<sup>1</sup> (Exh. 1.) Knudson did not reprimand Appellant at the time, but he notified UI Tax Bureau Chief Carie O'Brien. (Perkins testimony.)

Then, on September 28, 2017, Appellant called Barbara Corson, another Unemployment Tax Manager. (Exh. 3) Corson had been Appellant's manager for about two weeks at that point. (Snyder testimony.) She was calling to discuss a decision IWD had made about eliminating personal phone lines for the customer-service staff, who mostly use other lines. Appellant asked how the customer-service staff would log in their arrival time at work via voicemail "as is now required by the Gestapo." Corson also did not reprimand Appellant for that comment, instead forwarding on her complaint. (Exh. 3.)

Appellant placed on paid administrative leave later that day. (Exh. 144.)

Knudson, Dennis Schwartz, and O'Brien interviewed Appellant on October 25, 2017, as part of the investigation. (Exhs. 26-64, 1.) During the interview, Appellant explained she viewed herself as a trainer and a leader, but emphasized she was not a manager and noted she frequently pointed that out to her trainees. (Exh. 27.) She admitted she sometimes had personal conversations with trainees, but explained she never leaves the room during training sessions even if there is a break, so she would sometimes have those personal conversations with other trainees who remained in the room during a break. (Exh. 28.) She did not see anything wrong with this, pointing out that she had had personal conversations with O'Brien. (Exh. 28.) She explained she had been told when she took the trainer position that she was going to have to curb her tongue about

---

<sup>1</sup> Appellant denies saying this. However, Perkins gave credible testimony that she did. He testified he was absolutely certain he had heard it, it seems too specific an allegation to have been fabricated, she said in her misconduct hearing that she did not *remember* saying it (Exh. 139) — slightly different than her hearing testimony that she did *not* say it — and it fits with the reference to the Gestapo, which Appellant admitted.

work issues. However, she also believed she had a First-Amendment right to express herself and her personal thoughts, especially if it was on a break or at lunch. (Exhs. 31-32.) She further explained she gives trainees “the good, the bad, and the ugly” and did not realize she was “supposed to paint a happy face on everything.” (Exh. 35.) She defended giving her personal opinions about the IWD Director’s actions. (Exh. 46.) She also defended telling Perkins IWD was becoming like the Gestapo. She was unhappy with the work environment and felt it was becoming oppressive and controlling. (Exhs. 50-51.) She felt she was complaining about the work environment to a manager and believed it to be a “valid way of expressing that [she] was uncomfortable.” She was uncomfortable and unhappy with the restrictions imposed by IWD. (Exh. 51; Snyder testimony.) She defended the Gestapo comment to Corson as well, again explaining she was voicing her displeasure. (Exhs. 54-55.) Appellant also defended her comments about the other IWD employee, K.C. She explained the trainees to whom she made the comments knew what the issues were with K.C., had already had their own run-ins with her, and were getting caught in some crossfire. (Exh. 60.) She felt she was giving a realistic impression of IWD and that, if it was bad, it was not her fault but rather IWD’s for not being better. (Exh. 61.) She believed IWD was unfairly holding her to a management-level standard of conduct. She emphasized that all of her comments had been honest. (Exh. 62.) Finally, she expressed frustration in the interview that no one had ever told her any of her comments might be problematic, complained there were no regular performance reviews, and said she had been told by two different managers just two weeks before the relevant events that there were no issues with her performance. (Exh. 64.)

After the interview, Knudson was concerned about what Appellant thought was appropriate versus inappropriate work behavior. He felt she had not shown remorse or insight about how she was viewed as a leader and could sway new employees’ opinions about the agency. (Knudson testimony.)

On November 3, 2017, IWD terminated Appellant for misconduct. The termination letter stated:

The investigation into your alleged misconduct has been concluded. As a result of the misconduct revealed during this investigation, your employment with IWD is terminated effective immediately.

The investigation revealed that you were blatantly insubordinate when you made disrespectful and unprofessional comments in the presence of the IWD staff, including new employees, on multiple occasions about other IWD staff and managers, including the IWD director, during training sessions/meetings that you were responsible for leading. In addition, on two separate occasions, you made offensive and insulting comments to IWD managers in which you referred to your employer as the Gestapo. Throughout the investigation, you maintained that your



comments were appropriate for the workplace and indicated that you were as respectful as the IWD director deserved. In light of your egregious misconduct, your continued employment with the department would be counterproductive.

The work rules IWD claimed Appellant violated were:

***IWD Work Rules***

***2.5 General Standards***

- a. An employee must be respectful of the persons with whom the employee interacts while working. This includes, but is not limited to: being polite, courteous, and responsive.*
- b. An employee is prohibited from engaging in unprofessional, . . . offensive . . . conduct.*

***2.5.3 Standards of Conduct While on State Time.***

- b. While on State time, an employee is prohibited from:*
  - 4. Rude, . . . or otherwise inappropriate behavior toward other persons, including but not limited to: fellow employees, supervisors, management, . . . State employees . . .*

***2.10.2 Termination***

- a. Certain acts or omissions by an employee are serious or sufficiently below the standard of conduct that IWD has a right to expect of its employees to warrant immediate termination of employment with the agency, regardless of the employee's prior performance or conduct on the job.*
- b. Acts or omissions that will result in the immediate termination of employment with IWD include, but are not limited to, the following:*
  - 12. Insubordination, which includes but is not limited to: defiance of authority, including insulting or unprofessional remarks directed at a member of management . . . [Exhs. 135-36.]*

***State of Iowa Employee Handbook***

***Disciplinary Actions and Your Rights***

***Disciplinary Actions***

*. . . Disciplinary action, up to and including discharge, may be based on, but not limited to, any of the following reasons: . . . insubordination, . . . misconduct, or any other just cause . . . [Exh. 136.]*

Appellant had received a revised copy of the IWD Work Rules and had confirmed acknowledgement of them on July 6, 2017. However, she signed under protest, noting that the revised rules reference incorrect sections and sections not in existence, making them unclear. (Exh. 65.) The revised rules were corrected as of July 28, 2017. (Exh. 66.)

Appellant did not review the revisions, explaining she had not had time to do so. (Snyder testimony.)

A misconduct hearing was held. IWD stated during the hearing that Appellant's comments about the IWD Director were "obnoxiously weird" and that it found the use of the terms "Gestapo" and "Heil Hitler" to be "very discriminatory." IWD also explained Appellant was not given a written warning after the first trainee complaint on September 13 because they were in the middle of investigating that when the other complaints came in. They felt they just needed her out of the building. Appellant explained during the misconduct hearing that she had just been sharing her opinion and found it "funny," i.e. ironic, that she was terminated for having complained that IWD was like the Gestapo. She also complained that she had not received any warnings about her behavior. She felt she should have been allowed to express her discontent but said she would have bit her tongue if she had been warned that it might lead to termination. (Exhs. 138-39.)

On November 22, 2017, IWD issued a decision denying Appellant unemployment insurance benefits because she had discharged for violating a known work rule. (Exh. 137.) Appellant has appealed. (Notice of Appeal.)

### **Reasoning and conclusions of law**

#### Legal framework:

When an individual is discharged for misconduct, that person is disqualified from receiving unemployment insurance benefits until the individual has worked in and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.<sup>2</sup>

The applicable rule defines "misconduct" 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

---

<sup>2</sup> Iowa Code § 96.5(2)(a).

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.<sup>3</sup>

In considering whether an employee has committed misconduct, we are directed to “liberally construe the statute in light of its policy goals” and “narrowly interpret any statutory provision related to disqualification.”<sup>4</sup> The unemployment insurance law is in place to protect workers who become unemployed through no fault of their own from financial hardship.<sup>5</sup> The standard for misconduct for unemployment disqualification is higher than the standard for termination of employment.<sup>6</sup> Misconduct must be “substantial in nature” to support disqualification.<sup>7</sup> The burden of proof is on the employer to show an employee was discharged for misconduct.<sup>8</sup>

Employers have a “right to expect decency and civility from its employees.”<sup>9</sup> However, Iowa courts “accept the reality ‘that employees are not expected to be entirely docile and well-mannered at all times.’”<sup>10</sup> In order to rise to the level of substantial misconduct, an employee’s use of offensive language must generally be accompanied by other circumstances. For example, if it is done repeatedly, is threatening or confrontational, coincides with a refusal to obey a supervisor, or is done in front of customers, substantial misconduct may be found.<sup>11</sup> The cases where substantial misconduct has been found based on offensive comments typically involve obscene language or prior warnings to the employee about the conduct.<sup>12</sup>

---

<sup>3</sup> 871 IAC 24.32(a).

<sup>4</sup> *Irving v. Employment App. Bd.*, 883 N.W.2d 179, 201 (Iowa 2016).

<sup>5</sup> *Bridgestone/Firestone, Inc. v. Employment App. Bd.*, 570 N.W.2d 85, 96 (Iowa 1997).

<sup>6</sup> *Irving*, 883 N.W.2d at 195.

<sup>7</sup> *Myers v. Employment App. Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990).

<sup>8</sup> Iowa Code § 96.6(2).

<sup>9</sup> *Myers*, 462 N.W.2d at 738.

<sup>10</sup> See *Nolan v. Employment App. Bd.*, 2011 WL 441365, \*6 (Iowa Ct. App. 2011) (unpublished opinion) (quoting *Carpenter v. Iowa Dept. of Job Serv.*, 401 N.W.2d 242, 246 (1986)).

<sup>11</sup> *Id.* at \*6 (collecting cases).

<sup>12</sup> See *Henecke v. Iowa Div. of Job Serv.*, 533 N.W.2d 573 (Iowa Ct. App. 1995) (misconduct found where employee swore at his supervisor and threatened to make her sorry); *Myers v. Employment App. Bd.*, 462 N.W.2d 734 (misconduct found where employee became irate with a supervisor for his employer’s biggest client, called her a “dumb bitch,” and threatened to make things so miserable his employer would have to fire him); *Zeches v. Iowa Dept. of Job Serv.*, 333 N.W.2d 735 (misconduct found where employee swore and denigrated the company in front of customers and clients and had been warned twice recently about such conduct); compare with *Nolan*, 2011 WL 441365 (no misconduct where employee had referred to her supervisor as a “bitch” to two other employees).

Analysis:

This is a close case. Appellant certainly exercised poor judgment in the way she expressed dissatisfaction with her work environment to IWD managers. She was also expected to set a professional and positive tone for IWD through her training sessions and she failed to do so. She complained about the IWD Director and another IWD manager in front of her trainees. She also broached sensitive topics in front of her trainees which are perhaps better left outside the work environment. But I nonetheless find IWD has not met its burden to show Appellant's behavior amounted to a deliberate, substantial disregard of the standard an employer is entitled to expect.

IWD relies on its agency work rules and those of the State of Iowa to establish the standards of what it could expect from employees. The rules IWD points to are rules requiring employees to meet general standards of civility and professionalism at work. These kinds of rules and standards are especially susceptible to vastly different interpretations. What one individual might think is polite or courteous, rude or insubordinate, may vary dramatically from what another individual thinks, in ways that are objectively reasonable. It is significant that Appellant was never warned about her behavior prior to her termination, which IWD concedes.

Appellant's conduct targeted by IWD as warranting disqualification is as follows:

1. Complaining about the IWD director during a training session;
2. Complaining about an IWD manager during a training session;
3. Referring to the practices of IWD as "Gestapo" tactics and muttering "Heil Hitler" in conversation with IWD managers;
4. Discussing pulling her daughter out of school because she was being bullied by minority students during a training session; and
5. Discussing her ex-husband's racism during a training session.

IWD claims these acts were rude, unprofessional, or insubordinate. I do not find that any of them can be considered deliberate acts that violated work standards without Appellant at least having been warned first that IWD considered the specific conduct to be in violation of its rules.

That employees complain about work, their coworkers, and their managers is a fact of life.<sup>13</sup> Appellant's complaints about the IWD manager and director came out during conversations with trainees when technical issues were preventing work from starting or they were on a break. In some instances the trainees were weighing in with their frustrations as well. Appellant clearly believed herself to be in the company of her peers when she expressed frustration with IWD higher-ups during these training sessions.

---

<sup>13</sup> See, e.g., *Nolan*, 2011 WL 441365, at \*6 ("Complaining about one's boss during off-hours is an ubiquitous American tradition . . .").

This assessment was not unreasonable given that Appellant does not have oversight of any of these individuals, in fact has no direct reports, and is not considered a manager. The trainees were not brand-new employees; most had been at IWD for months if not years. It is true that Appellant was told when she became a trainer that she would need to hold her tongue about work issues and that she would be viewed as a leader. But without ever being warned that IWD considered this kind of venting or these specific types of comments to be a violation of work rules, I cannot find that they were deliberate acts in disregard of the work rules and standards IWD can expect. This conclusion is also supported by the fact that Appellant had had IWD managers complain to *her* about the work environment and their coworkers. This could lead Appellant to reasonably conclude that this type of conduct, while perhaps not ideal, was par for the course and therefore would not generally be considered in contravention of IWD or the State's work rules or standards of conduct.

With respect to the "Gestapo" and "Heil Hitler" comments, IWD characterized them as "very discriminatory" comments, but it is difficult to see how. Discrimination is unjust treatment based on a protected category. Appellant's comments cannot be seen as singling out the IWD managers based on their belonging to a particular class based on race, sex, religion, or the like. Rather they were comments meant to signal her dissatisfaction with recent changes in the work environment. For better or worse, the term "Gestapo tactics" has become relatively widely-used in society, and there is debate about whether its use is offensive.<sup>14</sup> Additionally, Appellant's comments were directed only at her own manager and another IWD manager, both of whom presumably had a greater ability than Appellant to communicate employee dissatisfaction up the chain. While the comments were rude and inflammatory, and Appellant certainly could have voiced her discontent in a more constructive way, Appellant did not use any obscene language, nor did she defy any orders of her managers. She was frustrated and expressing that frustration in front of people she thought could do something about it. Neither manager reprimanded Appellant for these comments in the moment. Again, without Appellant having been warned that this specific conduct violates IWD work rules, I cannot find that these comments were a deliberate violation of the standards IWD could expect such that they constituted misconduct warranting disqualification.

With respect to Appellant discussing racial matters during training sessions, it is first notable that IWD did not refer to these incidents in its termination letter, suggesting it may not have even considered them as forming the basis for her termination. Nonetheless, they were raised at hearing and in IWD's pre-termination interview of Appellant, so I will address them. One incident involved Appellant saying her ex-husband was racist, as evidenced by him not allowing her daughter to watch a cartoon

---

<sup>14</sup> See, for example, a spirited debate on CNN between Wolf Blitzer and Trump campaign spokesperson Katrina Pierson about whether use of the term is appropriate after Paul Manafort accused Senator Ted Cruz of using Gestapo tactics against then-candidate Trump at the Colorado Republican convention. *Available at* <https://www.youtube.com/watch?v=gEijtLvyhwI> (last viewed February 2, 2018).

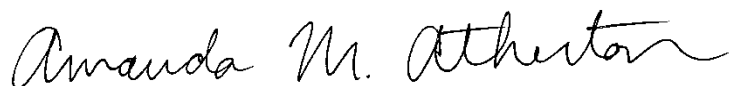
with a black character. The other incident involved Appellant saying she had decided to home-school her daughter because she was in a school with minority students – identifying them specifically by their race or ethnicity – and they were beating her up. She explained another minority student at the school had stood up for her daughter and she used it as an opportunity to teach her daughter that there were good and bad people in all colors. These incidents involved Appellant simply relaying factual information. Although there was a possible insinuation that her daughter was only getting beaten up because the other students were minorities, it could also be that Appellant was mentioning their racial status because it related to the second part of the story about teaching her daughter a lesson. There are no transcripts or recordings of these comments, so the only source of evidence for them is two trainees' interview statements. The trainees thought Appellant talked about race in a way that was inappropriate, but not offensive or discriminatory. They were much more offended by the comments of another trainee than Appellant's comments, though they did feel it was Appellant's responsibility to rein in the discussion. With the limited information available about Appellant's comments, and the fact that no clear discriminatory intent or beliefs can be inferred from the record evidence of them, IWD has again failed to show Appellant's comments constituted a deliberate disregard of the standards IWD could expect, especially since she had never been warned that IWD believed these types of comments violated their work rules.

Ultimately, the record does not support a finding that Appellant had any "wrongful intent" or "evil design" or that she "deliberately" and "substantially" violated employee standards of conduct. Her conduct was more akin to unsatisfactory conduct or good faith errors in judgment and discretion, which do not warrant disqualification under the applicable rule. The Department's decision to disqualify her for unemployment benefits must be reversed.

### Decision

Iowa Workforce Development's decision dated November 22, 2017 (reference 01) disqualifying Appellant from receiving unemployment insurance benefits is **REVERSED**. The Department shall take any action necessary to implement this decision.

Dated February 5, 2018.



Amanda M. Atherton  
Administrative Law Judge

cc: Carie O'Brien, IWD (By email)  
Justin Knudsen, IWD (By email)  
Ryan West, IWD (By email)  
Emily Chafa, IWD (By email)  
Joni Benson, IWD (By email)  
Nicholas Olivencia, IWD (By email)

### **Appeal Rights**

**This decision shall become final agency action unless the Appellant or any interested party appeals to the Employment Appeal Board within fifteen (15) days** after the date of this decision by submitting a signed letter or a signed written Notice of Appeal by mail, personal delivery, or fax to:

Employment Appeal Board  
Lucas State Office Building, 4th Floor  
Des Moines, Iowa 50319  
(515) 281-7191 (fax)

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.

An appeal to the Employment Appeal Board must:

- Include the name, address, and social security number of the claimant;
- Reference the decision from which the appeal is taken;
- Clearly state that an appeal from such decision is being made;
- Clearly state the grounds upon which such appeal is based; and
- Be signed by the party appealing.

On appeal to the Employment Appeal Board, the Appellant may represent himself or herself or may obtain the assistance of an attorney or another representative at the Appellant's own expense. The Appellant may qualify for free legal assistance from Iowa Legal Aid. To apply, call Iowa Legal Aid at **(800) 532-1272** or visit **[www.iowalegalaid.org](http://www.iowalegalaid.org)**. More information about obtaining legal advice is also available on the Administrative Hearings Division website at **<http://dia.iowa.gov/ahd/>**. The claimant should continue to file weekly claims for unemployment insurance benefits while the appeal is pending. A claimant can only receive benefits for the weeks he or she filed a valid claim.