

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIELLE K DONELSON
Claimant

ALDERMAN-DREHER HOLDINGS LLC
Employer

APPEAL NO: 20A-UI-11817-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/19/20
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 15, 2020, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 17, 2020. The claimant did not respond the hearing notice and did not participate the hearing. The employer participated in the hearing though the testimony of Alisson Alderman, Owner and Alexa Heeney, Regional Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time barista from March 10, 2020 through July 22, 2020. On May18, 2020, the claimant received a written warning for calling another employee the “N-word,” in violation of the employer’s rules as set forth in the employer’s handbook, which she acknowledged signing for March 20, 2020. The employer re-educated her on its expectations.

On July 21, 2020, employees brought forth a second complaint regarding the claimant's specific statements she made about Guatemalan people. She said all Guatemalans are rude and not nice at all. One Guatemalan employee worked for the employer and the claimant's comments resulted in hurt feelings.

The employer met with the claimant June 22, 2020, to discuss the matter with the claimant. She was defensive and denied making the disparaging comments about the Guatemalans. The employer determined the claimant's actions were harassment and the employee has a zero tolerance policy of harassment. The employer terminated the claimant's employment July 22, 2020.

The claimant has not received unemployment insurance benefits since her separation from this employer.

Alexa Heeney, Regional Manager, participated in the hearing on behalf of the employer.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant made one very disparaging remark about African-Americans and while she was still fairly new the employer took that opportunity to re-educate her about its expectations. Instead of improving her behavior, however, the claimant made disparaging remarks about a co-worker and customers from Guatemala.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The September 15, 2020, reference 01, decision is reversed. 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 he is otherwise eligible.



Julie Elder
Administrative Law Judge

November 24, 2020
Decision Dated and Mailed

je/mh