

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JANE E SHELLER**  
Claimant

**APPEAL NO. 10A-UI-06908-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VON MAUR INC**  
Employer

**OC: 05/24/09**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Jane Sheller, filed an appeal from a decision dated May 4, 2010, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 30, 2010. The claimant participated on her own behalf. The employer, Von Maur, participated by Store Manager Danielle Trowbridge. Exhibits One, Two, and Three, were admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Jane Sheller was employed by Von Maur from January 25, 2010 until April 14, 2010 as a full-time department manager. On April 14, 2010, an associate came to Store Manager Danielle Trowbridge to say an employee, Jameela, was crying in the bathroom, which was directly across from the office. Ms. Trowbridge met with Jameela to ask her what was wrong and she complained Ms. Sheller had trapped her in a supply closet and had made derogatory remarks to her.

Ms. Sheller was accused of telling Jameela to do her job and handle an adult conversation. That the claimant asked her if she did not know what she was doing or was just trying to be irritating. Also, Jameela said the claimant told her to “stop looking at me with your big doe-y eyes.” In addition, Jameela had asked for a “mediator” but the claimant ignored the request. This had occurred around 10:00 a.m.

Ms. Trowbridge brought Ms. Sheller into the office to discuss the allegations. The claimant said she did not mean to dismiss Jameela’s complaint but that she “acted like a four-year-old” and was very “childish.” She denied trapping the other woman in the supply closet but had stood in the doorway trying to get her to answer a question about a pager she was refusing to answer. She denied the other comments as well. She did step aside the second time Jameela asked for a “mediator.”

The administrative law judge was able to view the video footage submitted by the employer. The claimant did stop Jameela on her way to the supply closet but the other woman would not stop to discuss anything, walked away and entered the closet. Ms. Sheller did stand in the doorway, effectively blocking it, for a period of time, but then stepped aside and Jameela exited. However, Jameela did not leave immediately but stood confronting Ms. Sheller for at least two minutes during which time she waved her arms about broadly, cupped her head and squatted on the floor in a fetal position. She finally exited the frame and did not return.

The employer determined the claimant was guilty of “unprofessional conduct” and was discharged.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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 claimant did stop Jameela, apparently to question her, and it is apparent her subordinate would not stop to discuss what her supervisor wished to talk about. Ms. Sheller did stand in the doorway, effectively blocking it, but did step aside, although in response to what it is not possible to tell. It is equally apparent Jameela was highly agitated and not behaving in such a way as to be conducive to a calm discussion.

Ms. Sheller could have handled the situation more effectively but when confronted with a subordinate who refuses to obey a simple request to discuss the supervisor's concerns, it is not always possible to know the best course of action to follow. Jameela's agitation removed the situation from a normal discussion into the realms of insubordination and confrontation on her part. The judge also questions why, if Jameela was so intimidated and felt herself abused by the claimant, she did not leave immediately after exiting the supply closet rather than continue to confront and argue with Ms. Sheller for over two minutes. While the claimant could have exercised better judgment, this appears to be a one-time incident.

Ms. Sheller denied making any of the comments she was accused of making. The employer has only presented hearsay evidence about this. The video shows another employee in the area at the time of the incident and no reason was given as to why Jameela and this other employee were not called to testify in the hearing. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment benefits are two separate decisions. *Pierce v. IDJS*, 426 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. IDJS*, 351 N.W.2d 806 (Iowa App. 1984).

The administrative law judge concludes the claimant was discharged by not for misconduct sufficient to warrant a denial of unemployment benefits.

**DECISION:**

The representative's decision of May 4, 2010, reference 02, is reversed. Jane Sheller is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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