

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SANDRA K EBAUGH**  
Claimant

**APPEAL NO. 15A-UI-13197-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 11/01/15**  
**Claimant: Appellant (1)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Sandra Ebaugh filed a timely appeal from the November 23, 2015, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that Ms. Ebaugh had been discharged on November 5, 2015 for misconduct in connection with the employment. After due notice was issued, a hearing was held on December 18, 2015. Ms. Ebaugh participated. Edward Wright of Equifax represented the employer and presented testimony through Cheryl Dryer and Kayla Harkin. Exhibit A was received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Sandra Ebaugh was employed by Care Initiatives, doing business as Ravenwood Special Care, as a full-time certified nursing assistant from March 2015 until November 5, 2015, when the employer discharged her for alleged insubordination. Ms. Ebaugh's supervisor was Cheryl Dryer, Director of Nursing. On November 5, 2015, Ms. Dryer met with Ms. Ebaugh for the purpose of issuing a written reprimand for attendance. Ms. Ebaugh had recently missed two consecutive days of work due to a purported lack of transportation. During the meeting, Ms. Dryer asked how she could have been seen out at a social event on a day when she purportedly lacked transportation to work. Ms. Ebaugh told Ms. Dryer that is was "none of [Ms. Dryer's] fucking business." Ms. Ebaugh then stormed out of the meeting. While the employer had only been planning to issue discipline and continue the employment, Ms. Ebaugh's offensive outburst prompted the employer to reconsider the employment relationship and decided to discharge Ms. Ebaugh from the employment.

## REASONING AND CONCLUSIONS OF LAW:

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.

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 proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment 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 employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. Warrell v. Iowa Dept. of Job Service, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. Deever v. Hawkeye Window Cleaning, Inc. 447 N.W.2d 418 (Iowa Ct. App. 1989).

The evidence in the record establishes misconduct in connection with the employment based on Ms. Ebaugh's decision to direct profane, offensive language at her supervisor, Cheryl Dryer. It was not unreasonable for the employer to ask Ms. Ebaugh how she managed to attend a social event on the same day she was absent from work due to a purported lack of transportation. While Ms. Ebaugh may not have appreciated the question concerning her social life, she was by no means "provoked" into directing the offensive language at Ms. Dryer. Instead, she elected to escalate the conversation to include the use of offensive language and intended her comment as a challenge to Ms. Dryer's authority. The administrative law judge notes that Ms. Ebaugh writes in her appeal letter that she told Ms. Dryer to "fuck off." Such comment would be at least as offensive and inappropriate as the comment the employer attributes to Ms. Ebaugh.

Because Ms. Ebaugh was discharged for misconduct, she is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits.

**DECISION:**

The November 23, 2015, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account shall not be charged for benefits.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/css