

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRYSTAL L NELSON
Claimant

APPEAL NO: 12A-UI-05922-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPPORTUNITY VILLAGE
Employer

OC: 04/15/12
Claimant: Respondent (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated May 11, 2012, reference 01, that held the claimant was not discharged for misconduct on April 24, 2012, and benefits are allowed. A telephone hearing was held on June 13, 2012. The claimant did not participate. Tina Leonard, Personnel Specialist, and Robin Smith, Site Coordinator, participated for the employer. Official notice was taken of the Employer Appeal Documents.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on November 1, 2011, and last worked for the employer as a full-time medication manager on April 12, 2012. She was suspended on April 12 and discharged after an investigation on April 24 for inappropriate and unprofessional conduct.

Co-workers reported to the employer that claimant in an angry voice used profanity in the presence of a client on April 9, and again on April 11 referring to a co-worker as a “fucking bitch.” The employer had conducted training with claimant and co-workers about acting in a professional manner and it listed guidelines to be followed. The claimant admitted that she was angry on the occasions described but denied using profanity. The employer considered the co-worker reports credible and discharged claimant after her suspension for inappropriate and unprofessional behavior.

The claimant failed to respond to the hearing notice.

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.

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 administrative law judge concludes the employer has established claimant was discharged for misconduct in connection with employment on April 24, 2012.

The employer has a right to expect professional behavior from claimant when acting in the presence of clients and/or co-workers. The employer established this standard through training and written policy guidelines. While an isolated incident might be considered as some ill advised event, two incidents of profanity in front of clients and co-workers within two days does constitute job disqualifying misconduct.

DECISION:

The department decision dated May 11, 2012, reference 01, is reversed. The claimant was discharged for misconduct on April 24, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css