

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACQUELINE WILLIAMS**  
Claimant

**APPEAL NO: 10A-UI-07421-B**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABCM CORPORATION**  
Employer

**OC: 04/25/10**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jacqueline Williams (claimant) appealed an unemployment insurance decision dated May 14, 2010, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from ABCM Corporation (employer), doing business as the Concord Care Center, for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Mason City, Iowa on July 16, 2010. The claimant participated in the hearing. The employer participated through Cathy Bunkofske, Director of Nursing and Lynn Wulff, Licensed Practical Nurse. Employer's Exhibits One through Eight were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time certified nurse's assistant from October 28, 2009 through April 23, 2010 when she was discharged for insubordination and repeated inappropriate behavior. Registered Nurse Amber Bjorkstrand coached/counseled the claimant on January 15, 2010 for repeatedly using profanity and yelling at co-workers in front of residents and their families. The claimant volunteered to RN Bjorkstrand that, "I hope you don't mind but I yelled at your aids." The claimant had yelled at Renae for not getting a resident up sooner. RN Bjorkstrand told the claimant not to yell at the aides and that if she had a problem, she needed to take it up with the nurse. The claimant subsequently yelled at Annette in the dining room in front of family because Annette was waiting for another aide to bring a resident back to her room. She told Leslie to tell Annette, "Tell her to get off her fuckin ass and do it herself." The claimant then proceeded into the dining room and told Annette, "Get off your fuckin ass and do it yourself." Annette responded that she did not know the rules when feeding and did not know if she could leave the resident alone. The claimant replied, "Get with the program and know your shit." Annette and Leslie both reported this to the nurse. RN

Bjorkstrand prepared a disciplinary warning but the claimant did not sign it and she denies receiving the written warning.

The claimant volunteered to the employer that she lost her temper and swore at staff in front of residents and visitors on March 7, 2010. A written warning was issued for this incident and the claimant signed it on March 16, 2010.

The claimant had a generally negative attitude at the work site even though LPN Wulff tried to get her see things in a positive light. She was demeaning to certain employees and consistently complained to the charge nurses that no one can do their jobs and she is the only one who did anything around there. The claimant continually "bashed" the facility and used profanity in front of her co-workers and residents, especially the "F-- word." LPN Wulff reported that the claimant frequently stated, "I'm going to go have a cigarette out by the gazebo and if you want to fucking write me up go ahead." In the alternative she said, "If they want to fucking fire me, they can go ahead."

Her demeanor was not only affecting the staff but also the residents. She was short with residents and when something did not go right, she became "borderline abusive" to them. The claimant told one resident that it would be a while before he could be put to bed because of being "short-staffed" and since "some people can't do their job." Numerous employees reported that the claimant was "snotty" and swore to the residents.

On April 21, 2010 at approximately 8:30 p.m. the claimant approached Licensed Practical Nurse Lynn Wulff and demanded her keys. LPN Wulff asked the claimant what she needed them for and the claimant refused to answer but demanded the keys again before walking off with a "huffy attitude." The claimant returned shortly thereafter with an ice pack on her right elbow and LPN Wulff asked her what happened. The claimant stated she heard her right elbow pop twice and could not extend her right arm. LPN Wulff asked if she had injured it previously and the claimant refused to answer her. Another charge nurse named Bonnie appeared and both LPN Wulff and Bonnie directed the claimant to fill out an incident report and to leave to go get her elbow seen by a doctor. The claimant refused because she said she was not going to leave the aides short and will do the work the best she can.

LPN Wulff repeatedly told the claimant to fill out the report and to go seek treatment but she continually refused. The claimant eventually filled out the incident report and said that she would go to the emergency room after she left work. LPN Wulff was unsure of when the claimant left that night since the claimant never stated she was leaving. Administrator Julie Grimm reviewed the claimant's disciplinary record, frequent complaints by her co-workers and the final incident on April 21, 2010. It was determined that the final incident was yet another example of the claimant's failure to accept supervision and she was discharged on April 23, 2010.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on April 23, 2010 for insubordination and repeated inappropriate behavior by using profanity. 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). The claimant admits she used profanity one time but denies using it on a frequent basis. She readily admits she refused to go to the doctor as directed on April 21, 2010 because she did not want to leave the employer short-staffed. However, the employer was acting in the claimant's best interests because it was unknown how serious her injury could have been and she could have made it worse by continuing to work. Regardless of the claimant's views or beliefs, she is required to follow her employer's directives and failure to follow those reasonable directives is insubordination. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated May 14, 2010, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld 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.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs