

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LINDA L CATERON
Claimant

HIGBEE WEST MAIN LP
Employer

APPEAL 18A-UI-04290-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/04/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 30, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on May 2, 2018. Claimant participated. Employer participated through operations manager Clair Darling. Employer's Exhibits 1 through 6 were received. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time sales associate at Dillard's department store. The separation date was March 3, 2018. (Employer's Exhibit 2) On March 2 there was a sale and claimant was upset after having spent two hours cleaning up after the previous shift. (Claimant's Exhibit A). Manager Alex instructed dock worker Consuelo to take claimant more clothing items covered in plastic. Claimant believed that should not have been done during a sale and sales associate Teri Quintana heard her yell at Consuelo that she was not "taking that damn plastic off of this shit." Quintana had also heard her yell on February 28, 2018, about signs not being up for a sale, has been yelled at in front of customers, and had seen her bully Steve in the shirt department. (Employer's Exhibit 3) Dock manager Matthew Miller reported to Darling that he received complaints from dock worker Josh Russo that claimant yelled at dock employees while on the sales floor in front of customers. (Employer's Exhibit 4)

On February 16, 2018, a customer she had been helping, took some clothes into the shoe department. Claimant sought him out and because she had a daily quota, asked if he was ready to ring up while sales associate Noor was helping him with shoes. (Employer's Exhibit 6). Claimant blamed that encounter on Noor not speaking English as her first language, asking Darling, "Why did you hire someone who doesn't speak English?" The employer issued a final written warning for the incident. (Employer's Exhibit 5).

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:

Causes for disqualification.

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).

A warning weighs heavily toward a finding of intentional conduct. Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of his employer. *Myers v. Iowa Dep't of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985). When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986).

The employer is entitled to establish reasonable work expectations and rely upon employees to abide by them. The employer has presented substantial and credible evidence from multiple sources regarding different dates that claimant was verbally abusive to co-workers in front of customers after having been warned. This is disqualifying misconduct.

DECISION:

The March 30, 2018, (reference 01) unemployment insurance decision is affirmed. 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 she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/scn