

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA M WILSON DAHMS
Claimant

APPEAL NO: 13A-UI-08079-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES INC
Employer

OC: 06/02/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

APAC Customer Services, Inc. (employer) appealed a representative's June 26, 2013 decision (reference 01) that concluded Amanda M. Wilson Dahms (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 15, 2013. The claimant participated in the hearing. Turkessa Newsone appeared on the employer's behalf and presented testimony from one other witness, Jill Rice. 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on November 5, 2012. She worked full time as a customer service representative at the employer's Davenport, Iowa call center. Her last day of work was May 29, 2013. The employer suspended her that day and discharged her on June 4, 2013. The reason asserted for the discharge was inappropriate behavior.

On the morning of May 29 the group in which the claimant worked had jointly engaged in conversation which was not appropriate, with various employees using sexual innuendo. At one point the claimant specifically told a male coworker to "shut his vagina up" to which he made a more crude response.

At about 3:30 p.m. that afternoon one of the other female employees who had also engaged in the conversation had a dispute with a third female group member. The second woman started trying to start a discussion with the claimant, but the claimant did not wish to engage in the

conversation. The claimant went to an area where there were some team leads, seeking their intervention in the matter. The second woman coworker came to the same area and started screaming at the claimant, including using vulgar language. Three team leads then intervened, as they had concerns that the dispute could turn physical. However, there was no evidence that the claimant used any vulgar language in this argument, that she had said anything to the coworker other than that she was not going to have a discussion with the coworker, or that the claimant had made any verbal threat or physical action that would constitute a threat.

After the two employees were separated, the claimant finished her shift that day in another area. She was off work until May 29, at which point she was informed that she was being suspended pending investigation of the matter. On June 4 she was informed that she was being discharged due to the incident.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is that the claimant had engaged in inappropriate behavior regarding her interaction with the other female coworker on May 26. The employer has not established that there was anything the claimant said or did in that dispute which was inappropriate or in fact threatening. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's June 26, 2013 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs