

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**IBRAHIM GARADO**  
Claimant

**SIOUX CITY COMMUNITY SCHOOL DIST**  
Employer

**APPEAL 20A-UI-03940-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the May 5, 2020 (reference 01) unemployment insurance decision that denied unemployment insurance benefits to the claimant based upon his discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on May 29, 2020. The claimant, Ibrahim Garado, participated personally and was represented by Brenda Zahner. Cate Combs testified as a witness for the claimant. The employer, Sioux City Community School Dist., participated through witnesses Stefanie Verros and Rita Vannatta. Employer's Exhibits 1 through 9 were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**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 full-time beginning January 26, 2016 as an English as a Second Language ("ESL") family liaison. Claimant's immediate supervisor was Jen Gomez. He was discharged on March 6, 2020.

Claimant and his co-workers had personality conflicts for several years. See Exhibits 5, 6, and 7. On January 14, 2019, there was a memorandum of understanding issued setting for certain parameters for Mayra Alvarez and the claimant to limit their interactions with each other. See Exhibit 5. Claimant also encountered times when Mayra, Margret and Susana would talk about the claimant in derogatory ways. There were times when Margret would tell Mayra and Irene that they needed to go to the supervisor to get him fired. Claimant had complained to supervisors about his treatment in the workplace by his co-workers. See Exhibit 6 and 7. The other co-workers complained about the claimant's behavior in the workplace towards them. Claimant received an involuntary transfer on November 9, 2018 due to the ongoing issues with co-workers in the workplace. See Exhibit 6.

On March 5, 2020, the claimant heard Irene, Susana and Mayra talking about him again. As claimant was leaving for break he went to Irene's desk and said "I know you guys are talking bad about me, and I am just telling you to not talk about me with those girls anymore". See Exhibit 2. Claimant also said, "you need to stop talking about me, all of you". Claimant had a raised voice because he was upset about the situation. No profane language was used by the claimant. No threats of violence were made by the claimant. Claimant was discharged the following day for violation of the employer's written workplace bullying policy. See Exhibit 8.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

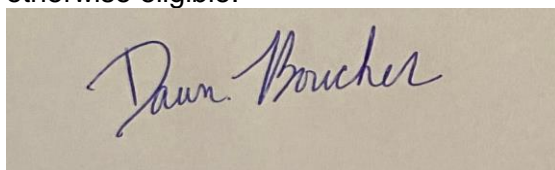
(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

It is clear that the claimant's co-workers made numerous derogatory comments about the claimant and even conspired on how to get him discharged from his employment for several years. Claimant's actions in asking another co-worker not to join the other co-workers who continued to speak about him in a derogatory fashion is not considered an incident of job-related misconduct. While the claimant may have used a raised tone of voice, he was not threatening, nor used any profane language. This final incident on March 5, 2020 does not rise to the level of job-related misconduct sufficient to deny unemployment insurance benefits. As such, benefits are allowed.

**DECISION:**

The May 5, 2020 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

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Dawn Boucher  
Administrative Law Judge

June 11, 2020  
Decision Dated and Mailed  
db/sam