

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ASHANTI GARRETT**  
Claimant

**APPEAL NO: 14A-UI-05901-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PARCO LTD**  
Employer

**OC: 05/19/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 29, 2014, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 1, 2014. The claimant participated in the hearing. Matt Huddleston, General Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time crew member for Parco Ltd. (Wendy's) from July 9, 2013 to May 15, 2014. She was discharged for having a poor attitude and insubordination.

On May 1, 2014, the employer observed the claimant came to work with an attitude. She was not having a good night and had a verbal argument with Assistant Manager Quanita Brown. The claimant had called before her shift to state she was not feeling well and when the employer told her it could not find a replacement to close she agreed to report for work despite being ill. While at work the claimant asked to go home but was again told there were no replacements available. The claimant and Ms. Brown exchanged words and the claimant called Ms. Brown a "bitch." Ms. Brown asked the claimant if she called her a bitch and the claimant said yes. Ms. Brown then sent the claimant home. Three other employees heard the claimant call Ms. Brown a "bitch." The claimant was off work May 2, 2014, and was not scheduled to return to work until May 6, 2014, at which time the employer notified her it was terminating her employment for the incident May 1, 2014. The employer cited policy number seven which references threatening or intimidating or using abusive language toward a customer or a co-worker; policy number eight which prohibits insubordination and failure to follow instructions; and policy number eight regarding immoral or abusive behavior; when stating the reasons for the claimant's termination.

The claimant received previous written warnings November 9, 2013 and November 10, 2013, because of negative attitude issues. On November 9, 2013, the claimant's attitude prevented the employer from allowing her to complete her closing duties on time. When the employer confronted her about her attitude she displayed a more negative attitude and was sent home for arguing. On November 10, 2013, the claimant reported for work with a negative attitude. She had been told in the past she needed to maintain a positive attitude at work with customers and co-workers. She was eventually sent home before the end of her shift because she failed to improve her attitude. The warnings November 9 and 10, 2013, originated from two different managers, neither of whom were Ms. Brown.

The claimant and Ms. Brown had a previous personal relationship and the claimant felt betrayed by Ms. Brown because she disclosed intimate details of their relationship with other employees, which hurt, embarrassed and humiliated the claimant.

### **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 § 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).

The claimant displayed an ongoing negative attitude throughout her employment and the incident with Ms. Brown was simply the latest of many “bad days.” She had received verbal coaching and counseling sessions and two written warnings regarding her attitude but despite those admonitions from the employer her negative attitude continued.

While the administrative law judge understands that on May 1, 2014, when the claimant called Ms. Brown a “bitch” she was not feeling well but mostly it stemmed from their previous personal relationship and Ms. Brown’s disclosure of private, intimate details about their relationship to other employees. That is one of the negative consequences that can result from personal relationships between co-workers and why those relationships are sometimes discouraged. Although not unsympathetic to the claimant’s feelings of embarrassment and humiliation in that situation, the administrative law judge cannot sanction the claimant’s behavior. When at work an employee still has a responsibility to act in an appropriate and professional manner and regardless of how difficult it might be cannot let her personal feelings spill over and affect her behavior and performance at work.

Under these circumstances, the administrative law judge concludes the claimant’s conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer’s interests and the employee’s duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The May 29, 2014, reference 03, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs