

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HAGIR K TAGLI
Claimant

**PRAIRIE MEADOWS RACETRACK &
CASINO**
Employer

APPEAL 17A-UI-05556-NM

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/30/17
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 19, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for violation of a known company rule. The parties were properly notified of the hearing. An in-person hearing was held on June 13, 2017 in Des Moines, Iowa. The claimant participated and testified with the assistance of Sudanese-Arabic interpreter Jumaa Adam. The employer participated through Employee Benefits Manager Gina Vitiritto.

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 as a housekeeper from January 11, 2007, until this employment ended on May 3, 2017, when she was discharged.

On April 22, 2017, there was an incident between the claimant and one of her coworkers. During her lunch break claimant received a phone call from her family in Sudan regarding serious health situations with her mother and sister. When claimant went to take the call she took her lunch box and placed it in the locker area. Claimant's coworker, who had been assigned to clean the locker area, saw claimant's lunch box and tossed it in a box with some shoes. Later, when the claimant went looking for her lunch box and saw where it was, she became upset. Claimant informed her coworker she would have treated a coworker's belongings better than that. The coworker stated she did not care, because she was just following orders she had been given.

Claimant's coworker later reported the exchange to a supervisor, telling the supervisor that claimant yelled at her, got in her face, and made her feel uncomfortable. Claimant acknowledged that she may have raised her voice or spoken in a harsh tone, as she was upset

about the news she had received about her family. Claimant also noted that the two did not speak the same language and she believed it was possible her coworker thought conversation directed at another employee about the situation with her family was directed at her. The employer also observed on its security footage that claimant pointed her finger at her coworker and appeared to be speaking to her in an angry manner, while standing very close to her. There were no allegations of physical contact or threats. The employer's policies prohibit conduct that is intended to threaten or harm. Claimant was given a copy of this policy upon her hire. The employer concluded the claimant's conduct on April 22 violated this policy and terminated her employment.

Prior to this incident, claimant had received a written warning on January 4, 2017 for similar conduct. The written warning contains an advisement that further incidents may lead to termination. Claimant testified that she disagreed with the warning as explained to her by the individual the employer used to interpret. Claimant explained what had happened to the interpreter but he told her she just needed to sign the document. The interpreter did not inform the claimant of the advisement that further incidents could lead to termination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The conduct for which claimant was discharged was merely an isolated incident of poor judgment. Claimant provided testimony to indicate that, on the day in question, she had received some news about her family members that upset her. This likely led claimant to speak to her coworker in a manner that was harsher than she intended. It is also possible that a language barrier contributed to this problem. There was no evidence provided to indicate that claimant came into physical contact with or made any threats against her coworker. Claimant was careless, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016). Because the employer has failed to establish disqualifying misconduct, benefits are allowed, provided claimant is otherwise eligible.

Furthermore, an employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Here, claimant was issued a warning, but due to her language barrier, did not sufficiently understand the consequences of the warning or that her job was in jeopardy. Inasmuch as employer had not provided sufficient warning to the claimant about the issue leading to the separation, it has similarly not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

DECISION:

The May 19, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs