

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLY R PELZ**  
Claimant

**APPEAL NO. 12A-UI-03881-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TRINITY REGIONAL MEDICAL CENTER**  
Employer

**OC: 03/11/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated April 6, 2012, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on May 2, 2012. Claimant participated. The employer participated by Mr. Ted Vaughn, Human Resource Manager; Ms. Jennifer Corell, Manager Critical Care Unit; and Ms. Linda Whaley, Vice President of Clinical Operations.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Ms. Kelly Pelz was employed by Trinity Regional Medical Center from July 16, 2001 until March 13, 2012 when she was discharged from employment. Ms. Pelz was employed as a full-time registered nurse and was paid by the hour. Her immediate supervisor was Jennifer Corell.

Ms. Pelz was discharged based upon a complaint that was made by a hospital employee and corroborated by another employee verifying that Ms. Pelz had displayed an angry demeanor and made inappropriate statements in the presence of a hospital patient and a new worker who was being orientated on March 6, 2012. It was reported that Ms. Pelz had stated "this is fucking bullshit" during a bedside report being given on a critically ill patient. When informed of the initial allegation the employer investigated the allegation and verified with the second employee that the statement had been made and verifying that it had been made in the presence of a patient and a new employee. During the course of the investigation one of the witnesses had volunteered that Ms. Pelz had used the same inappropriate language and had become angry during the giving of a report on approximately February 2, 2012. The employer considered the claimant's conduct to be a serious matter and concluded that it warranted a discharge as it was a violation of the hospital's behavioral expectations for employees and because the claimant had been warned in April of 2011 about her demeanor and interaction with other employees.

Ms. Pelz recalls some aspects of the incident that occurred on March 6, 2012 but does not recall making the statement attributed to her. It is the claimant's position that if a statement was made it was not made in the presence of a patient or a new employee that was being orientated. It is the claimant's position that her immediate supervisor was looking for a reason to discharge the claimant. Ms. Pelz contends that inappropriate language is not uncommon in the workplace.

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance. It does.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter the evidence in the record establishes that Ms. Pelz had previously been warned regarding her demeanor and her ability to work cooperatively with other hospital employees. When a hospital employee who was identified on the record, complained that Ms. Pelz had used inappropriate language during a bedside report in the presence of a patient and a new worker,

the employer acted reasonably in investigating the allegation and confirming with a second employee that the event had taken place as described by the person who had complained.

The administrative law judge notes that the employer's witness testified with specificity naming the individuals who had complained and reciting the exact words attributed to Ms. Pelz during the incident. In contrast Ms. Pelz remembers some of the incident but does not remember using inappropriate language. The administrative law judge concludes that the claimant's ability to remember details that are favorable to her while not remembering details that are unfavorable to her strains credibility.

The administrative law judge concludes based upon the totality of the evidence in the record that the employer has sustained its burden of proof in establishing the claimant's discharge took place under disqualifying conditions. The employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational disrespectful or name-calling context may be recognized as misconduct disqualifying the employee from the receipt of unemployment insurance benefits. See Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). The use of foul language alone can be a sufficient grounds for a misconduct disqualification for unemployment benefits. Warrell v. IDJS, 356 N.W.2d 587 (Iowa App 1984). Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated April 6, 2012, reference 01, is affirmed. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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