

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHANTAL C PIERRE
Claimant

APPEAL NO. 17A-UI-12541-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABRH LLC
Employer

**OC: 11/05/17
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Chantal Pierre (claimant) appealed a representative's December 4, 2017, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with ABRH (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 28, 2017. The claimant participated personally and through Leah Dittmer, former co-worker. The employer was represented by Susen Zevin, Hearings Representative, and participated by David Harbin, Operations Director, and Hope Gordon, General Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 14, 2016, as a full-time shift leader. The employer has a handbook but it did not give a copy to the claimant. The handbook does not contain any policies about off duty conduct. The employer did not issue the claimant any written warnings during her employment.

Profanity was used at work by employees and the general manager. The general manager said things like, "I'm the fucking boss". Employees were not terminated for such conduct. The claimant was frustrated with the general manager. The general manager told her she would close on some weekends but not every weekend. Then, the general manager scheduled her to close every weekend. The general manager promised her other things and did not follow through. The claimant complained to the operations manager but nothing happened.

On October 23, 2017, the claimant was frustrated and left a voice message for the general manager while she was not working. She complained about her schedule and used profanity. She threatened to file a civil rights complaint. In response, the employer suspended her on October 25, 2017. On October 30, 2017, it terminated her for being disrespectful and using vulgar language on October 25, 2017, when she was not working.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). In order for an employer to show that its employee's off-duty activities rise to the level of misconduct in connection with the employment, the employer must show by a preponderance of the evidence:

[T]hat the employee's conduct (1) had some nexus with the work; (2) resulted in some harm to the employer's interest, and (3) was in fact conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer's interest would suffer.

Dray v. Director, 930 S.W.2d 390 (Ark. App 1996); *In re Kotrba*, 418 N.W.2d 313 (SD 1988), quoting *Nelson v. Department of Employment Security*, 655 P.2d 242 (WA 1982); 76 Am. Jur. 2d, Unemployment Compensation §§77–78.

In this case, the message the claimant left for the general manager was related to her work schedule. There was a nexus with work. The employer failed to provide any evidence that the claimant's behavior harmed the employer's interests or was done with the intent or knowledge that it might harm the employer's interests. The claimant's actions did not violate the employer's code or rules of the handbook. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's December 4, 2017, decision (reference 02) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs