IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

MARTHA L NORIN Claimant **HEARTLAND EMPLOYMENT SERVICES LLC** Employer	**APPEAL 16A-UI-08930-JCT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/05/16** **Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 11, 2016, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was scheduled to be held on September 1, 2016 but continued to allow the claimant to receive the employer exhibits. A second hearing was scheduled and held on September 12, 2016. The claimant participated personally. The employer participated through Frankie Patterson, hearing representative with Barnett Associates. Employer witnesses included Belinda Rycheghem, Sheri Burkin, and Karen Kress testified on behalf of the employer. Anna Robinson, Natasha Ramirez and Grace Rentfro attended the hearing but did not offer testimony. Employer exhibits 1 through 21 were received into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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: The claimant was employed full-time as a housekeeper/laundry person and was separated from employment on June 9, 2016, when she was discharged for insubordination and being disruptive.

At the time of hire, the claimant was issued a written handbook and acknowledged receipt of it (Employer exhibit 18.) The employer's handbook contains policies against certain conduct which were argumentative and disruptive to patient care (Employer exhibits 19-21). Certain infractions of employer conduct may result in being placed on a final warning or immediate discharge (Employer exhibits 19-21.) Prior to discharge, in January 2016, the claimant was issued a final written warning and suspension in response to an incident for refusal to disinfect a mattress. The claimant refused to do so, stating it was not her job, and was subsequently

issued a warning which she refused to sign, or even read (Employer exhibit 17.) Because the claimant was upset with incident, she did not read through the language that stated her job was in jeopardy and it was a final warning (Employer exhibit 17).

On June 2, 2016, an incident was reported to the employer that the claimant had been mocking or taunting a co-worker named Anna Robinson. During their shift, Ms. Robinson asked the claimant where supervisor, Karen Kress, was at, and the claimant responded, "Karen, Karen." Ms. Robinson said, "do you have to always mock me?" The claimant said "yes, because you're always wanting the boss to do your job for you (Employer exhibits 3, 4 and 5)." This conversation occurred near the nurses' station, where both families and residents have access. The claimant was upset because she would sometimes have to help with Ms. Kress' work if Ms. Kress was busy helping other employees. The incident was witnessed by peers, Grace Renfro, Natasha Ramirez and Heather McGill (Employer exhibits 2, 7 and 9),

In response to the confrontation, the claimant's immediate supervisor, Karen Kress, asked the claimant to go to human resources to provide a statement about the incident, while both were standing near the Eagle Room. The claimant on three occasions refused as Ms. Kress pled with her. The claimant did not want to talk to human resources because she was "not in a good mood". The claimant said she was not going to play games (Employer exhibits 11 and 12) also made a reference to Ms. Kress about "shit" although the evidence was disputed as to whether the claimant referred to Ms. Robinson as a "piece of shit" or told Ms. Kress the statement/investigation was "a bunch of shit". The employer reported that as the claimant refused to go to human resources, she was disruptive and loud. The employer reported that employees Hope Greenwood (Employer exhibit 13) and Sheri Burken (Employer exhibit 14) overhead the exchange between the claimant and Ms. Kress. The claimant denied being loud and insubordinate. The claimant left on June 2, 2016 without meeting with human resources as requested. On June 3, 2016, the employer called the claimant at home to follow up about the incident. While speaking with human resources and Ms. Kress, the claimant referred to Ms. Robinson as a "lazy c-nt". The claimant was subsequently discharged.

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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.*. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id*. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The credible evidence presented was the claimant was issued a written handbook and acknowledged receipt of it (Employer exhibit 18.) The employer's handbook contained policies against certain conduct which included being argumentative and disruptive to patient care (Employer exhibits 19-21). The claimant was also issued a final warning in January 2016, which she refused to sign, after refusing to disinfect a mattress upon request by the employer (Employer exhibit 17). The claimant knew or should have known her job was in jeopardy based on the reference to it being a final warning, and language contained within the warning itself (Employer exhibit 17). Then on June 2, 2016, the claimant engaged in an unnecessary confrontation with her peer, Anna Robinson, and was observed mocking her, which was confirmed by multiple co-workers, (Employer exhibits 2, 7 and 9), and that the claimant herself acknowledged was in response to being mad that she had to help cover work if her manager was helping others. When the employer requested the claimant visit with human resources about the incident, she used profanity to her manager, and repeatedly refused to meet because she was mad.

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job*

Serv., 367 N.W.2d 300 (Iowa Ct. App. 1985). The administrative law judge finds that the employer's request for the claimant to meet was reasonable and the claimant's being mad was not a good cause reason for non-compliance. When the claimant again was confronted by the employer by telephone on June 3, 2016, the claimant again used profane language, referring to Ms. Robinson as a "lazy c-nt." "The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Based on the evidence presented, the administrative law judge is persuaded the claimant knew or should have known her conduct of being both insubordinate to Ms. Kress' request for her to meet with human resources and repeated use of foul language were contrary to the reasonable employer policies and best interests of the employer. Misconduct has been established. Benefits are denied.

DECISION:

The August 11, 2016, (reference 01) unemployment insurance 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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Jennifer L. Beckman
Administrative Law Judge

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Decision Dated and Mailed

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