

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

JENNIFER R GREEN

Claimant

and

GOOD SAMARITAN SOCIETY INC

Employer

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HEARING NUMBER: 17BUI-01922

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Jennifer Green (Claimant) worked for the Evangelical Lutheran Good Samaritan Society as a full-time manager from December 1, 2013 until she was fired on January 30, 2017. The Evangelical Lutheran Good Samaritan Society's employee handbook provides that "indecent or obscene conduct," and "actual or threatened abusive treatment of others" are "Group III offenses." (Ex A). Group three offenses result in termination for the first offense.

On January 27, 2017 the Claimant met at work with a subordinate who happened to be her sister-in-law. They were meeting with, and in the presence of, director Ron Calvert. The purpose of the meeting was to discuss the subordinate leaving work without permission from the Claimant. The meeting became heated between the Claimant and her subordinate. During this meeting the Claimant said to her subordinate "Fuck You" and slammed a chair into a desk. The subordinate

responded in kind. A worker who was outside the

room at the time was able to hear the exchange. Both Claimant and her sister-in-law reentered the room after both had walked out for a period. Both stated that they believed that they could move on from the issue "in time."

The Employer terminated both the Claimant and her subordinate for their behavior in the meeting of January 27, 2017.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2017) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or

repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

An 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 receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). The “question of whether the use of improper language in the workplace is misconduct is nearly always a fact question. It must be considered with other relevant factors, including the context in which it is said, and the general work environment.” *Meyers v. Employment Appeal Board*, 462 N.W.2d 734, 738 (Iowa App. 1990). An offensive comment can be misconduct even where the target of the comments are not present. *Myers v. Employment Appeal Board*, 462 N.W.2d 734, 738 (Iowa App. 1990).

Critically the Evangelical Lutheran Good Samaritan Society has a “general work environment” that is inimical to such profane abuse at work. Had the Evangelical Lutheran Good Samaritan Society tolerated this supervisor’s profane abuse of a subordinate, it would be seriously impaired in its ability to take action for such conduct in the future. A supervisor is expected to set an example, and what the Claimant did here was to invite exactly the sort of reaction she got from her subordinate. Abuse of a subordinate need not be tolerated merely because there is a family relationship. Workers are often well-known to co-workers or superiors and some workers spend many years in close quarters. This does not excuse the verbal abuse that took place here, and the Claimant as a manager was fully aware that what she did was not permitted. It is one thing to use a single curse word in a joke not meant to belittle anyone, and it is another to direct “Fuck you” to a subordinate while arguing, and then slamming a chair. A mere exclamatory curse, or use of a single curse word in a joke, is a use of profanity. Saying “fuck you” under these circumstances clearly crossed from use of profanity to “abusive treatment of others.” The Claimant had adequate notice of the seriousness of this offense. Again, the Evangelical Lutheran Good Samaritan Society has sound business reasons for maintaining its low tolerance for this behavior.

It is true that “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.” 871 IAC 24.32(1)(a). The Claimant’s cursing of her subordinate was not inadvertent, negligent or the result of a good faith error. It was an intentional act. Such cursing can be disqualifying even in isolated instances. *Carpenter v. IDJS*, 401 N.W. 2d 242, 246 (Iowa App. 1986). The Claimant’s conduct, though isolated, was intentional, not in good faith, and sufficiently serious to rise to the level of disqualifying misconduct.

DECISION:

The administrative law judge’s decision dated March 16, 2017 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, she is denied benefits until such time the Claimant has worked in and has been paid wages for insured work equal to ten times the Claimant’s weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(2)”a”.

The Board remands this matter to the Iowa Workforce Development Center, Claims Section, for a calculation of the overpayment amount based on this decision.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

RRA/fnv