

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA D DELLIT**  
Claimant

**APPEAL NO. 12A-UI-03821-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BOSTON WINDOW CLEANING INC**  
Employer

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

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated April 5, 2012, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on April 30, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Tracy Fishlene participated in the hearing on behalf of the employer with witnesses Brad Stradt, Dawn Dykema, Doug Knochenmus, Jeff Hathaway, and Virginia Brobston.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full-time for the employer as a sweeper-scrubber operator from April 18, 2011, to March 5, 2012. The claimant was informed and understood that under the employer's work rules, negligence causing injury to an employee and using profanity in the workplace were grounds for discipline. The claimant had been warned in January or February 2012 after using profanity at work.

On March 2, 2012, the claimant was backing her scrubber up and struck an employee who had stopped to get something out of her purse. A supervisor, Jeff Hathaway, warned her to look back before backing up. The claimant insisted that she had looked back and the employee should not have been where she was. When Hathaway told her that it would not have happened if she was looking, the claimant replied, "Fuck you," and drove off.

The claimant was suspended on March 5 and discharged on March 6 for her negligence in causing a personal injury to an employee and her use of profanity on March 2, 2012.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant denied using profanity, but Hathaway's testimony that she had was corroborated by other witness and outweighs the claimant's testimony.

The claimant was negligent on March 2, 2012, but a single instance of negligence does not amount to work-connected misconduct. *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731 (Iowa App. 1986). But, the claimant's directing profanity at a supervisor was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated April 5, 2012, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw