

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRICIA L CARTEE**  
Claimant

**APPEAL NO. 08A-UI-11680-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MID IOWA SUBWAY INC**  
Employer

**OC: 07-20-08 R: 02**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 5, 2008, reference 06, decision that denied benefits. After due notice was issued, a hearing was held on December 30, 2008. The claimant did participate. The employer did participate through Terry Umberger, Manager; Jan Gute, Assistant General Manager; and (representative) Joel Tharp, General Manager.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a sandwich artist, part-time, beginning in October 9, 2008, through November 17, 2008, when she was discharged.

On November 14 the claimant entered into a verbal altercation with another coworker, Ramona. The claimant was taken outside by the store manager, Terry Umberger, who told her to calm down and to stop yelling and screaming. The claimant told Ms. Umberger that she should fire “that fucking black bitch.” The claimant also yelled at Ms. Umberger and shook her finger in her face. The claimant also told Ramona to “come outside if you want to see how big of a bitch I am.” Ms. Umberger believed that the claimant was threatening Ramona with physical violence by asking her to come outside to the parking lot because the claimant told her she wanted to “kick Ramona’s ass.”

Ms. Umberger denied that Ramona was using any profanity, although Ramona was disciplined for yelling when she was responding to the claimant.

Ms. Umberger reported the incident to Ms. Gute and to Mr. Tharp who determined that the claimant had violated the employer’s business policies by using profanity when speaking to both Ms. Umberger and to Ramona and for threatening Ramona with physical violence. On November 17 the claimant was told she was being discharged for the incident of November 15.

Ms. Gute reviewed the surveillance video that, while it did not have sound, did show the actions of the participants in the verbal altercation on November 15.

### **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.

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 claimant entered into a verbal altercation with a coworker, Ramona. The administrative law judge is not persuaded that Ramona was the aggressor. Rather, the testimony of Ms. Umberger, in conjunction with what Ms. Gute said she saw when she watched the video tape, convinces the administrative law judge that the claimant was the aggressor. The administrative law judge is also persuaded that the claimant used profanity and referred to a coworker in a vile manner.

"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. EAB, 462 N.W.2d 734 (Iowa App. 1990).

The claimant also threatened Ramona with physical violence. The claimant's actions violated the employer's policies. While the claimant may not have engaged in similar conduct prior to her discharge, her actions were volitional and were severe. The claimant knew or should have known that shouting, yelling, using vile language about a coworker, and threatening a coworker was conduct not in the employer's best interest. The claimant's actions are sufficient misconduct to disqualify her from receipt of unemployment benefits. Benefits are denied.

**DECISION:**

The December 5, 2008, reference 06, 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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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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