

Memorial Hospital from July 28, 2003 to August 12, 2005. On June 14, 2004, the claimant received a written warning for leaving work to go to the dentist without notifying her supervisor. On December 29, 2004, the claimant was suspended following a confrontation with a supervisor during which the claimant used the "f-word." The warning also cited three incidents of the claimant treating her supervisor and co-workers rudely and inappropriately. The claimant signed the warning and admitted using profanity when speaking to her supervisor. The warning stated that any further incidents of a similar nature would result in termination. On August 8, 2005, the claimant told another employee to "mind (her) own business" when the other employee tried to correct her regarding a standard procedure. The claimant testified she was setting up for tray-line and asked why another employee could not mind (their) own business. Later that day, the claimant received an outside phone call and was "rude and derogatory" to the caller. The conversation took place within hearing distance of a staff member, a dietician, and Renee Pilypaitis. The claimant testified she was being harassed by her phone company and had asked them not to call her at work and did become upset during the course of that phone call. On August 10, 2005, a department manager called Ms. Pilypaitis and stated that the claimant had a conversation with a doctor wherein the doctor complained about the condition of a refrigerator and the claimant reportedly said it was not her job. The claimant testified that the doctor asked whose job it was to take care of the refrigerator and she said she did not know but could find out for him. The employer terminated her employment August 12, 2005, following the final three incidents the week of August 8, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting 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 of proving disqualifying job misconduct. 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). While the employer listed several instances where the claimant might have used better judgment in how she interacted with people, it does not appear that her actions rise to the level of intentional misconduct as defined by Iowa law. Additionally, the claimant did not have any warnings between the December 29, 2004, warning and the termination date of August 12, 2005, a period of nine months. She also participated in the Employee Assistance Program which appears to have helped with at least some of her interpersonal skills issues. For the above-stated reasons, the administrative law judge concludes that the claimant's actions do not constitute disqualifying job misconduct. Therefore, benefits are allowed.

DECISION:

The August 30, 2005, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kjw