

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BONNIE L GANGSEI**  
Claimant

**APPEAL NO. 14A-UI-00273-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAVERLY HEALTH CENTER**  
Employer

**OC: 12/01/13  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Bonnie Gangsei filed a timely appeal from the December 30, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 31, 2014. Ms. Gangsei participated. Abby Miller represented the employer and presented additional testimony through Kathy Bartels, Paula Vaughn, Lorie Henning and Joann Natham. Exhibits One through Six were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Bonnie Gansei was employed by Waverly Health Center as a part-time aide in the Nutrition Services department from 2004 until December 3, 2013, when the employer discharged her from the employment.

The final incident that triggered the discharge was a comment Ms. Gangsei uttered to Lorie Henning, R.N., Manager of Cardiac Rehab Department, on December 2, 2013, when Ms. Henning initiated a conversation with Ms. Gangsei about why Ms. Gangsei was working in an area other than her usual area. In response to the inquiry, Ms. Gangsei responded that she was being punished for something she did not do. Ms. Gangsei added that a particular coworker had accused her of yelling at the coworker. Ms. Gangsei named the coworker, Christiara Deefe. Ms. Deefe is a young woman who had just started at the Waverly Health Center in August 2013. Ms. Gangsei added that she had not yelled at the coworker. When Ms. Henning indicated a lack of familiarity with the coworker at whom Ms. Gangsei had allegedly yelled, Ms. Gangsei clarified by saying, “that black lady that works down here.” Ms. Deefe was only African-American aide in the Nutrition Services. Mr. Henning perceived Ms. Gangsei’s reference to Ms. Deefe as “that black lady” to be racist or derogatory. Later in the day, Ms. Henning had a previously scheduled meeting with Joann Natham, Chief Clinical and Nursing Officer. During that meeting, Ms. Henning mentioned Ms. Gangsei’s utterance to

Ms. Natham. Ms. Natham also perceived Ms. Gangsei's utterance as racist or derogatory. That same day, Ms. Natham summoned Ms. Gangsei to a meeting and discharged her from the employment.

On November 19 2013, Ms. Natham had suspended Ms. Gangsei from the employment for a day in response to multiple young coworkers' complaints that Ms. Gangsei had spoken to them in a rude manner. Ms. Gangsei is 64 years old. Ms. Deefe had been the initial complainant. Ms. Deefe had gone to the employer on November 18, 2013. The employer had interviewed Ms. Deefe and the other coworkers. Through leading questions of those employees, the employer first raised the question of whether Ms. Deefe's interaction with Ms. Deefe might have a racially discriminatory component and then erroneously concluded that it was racially based. Ms. Deefe had not gone to the employer with a complaint of racial discrimination.

### **REASONING AND CONCLUSIONS OF LAW:**

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record fails to establish misconduct in connection with the December 2, 2013 utterance that triggered the discharge. The weight of the evidence indicates that Ms. Gangsei lacked a racially discriminatory intent when she responded to Ms. Henning's inquiry and identified Ms. Deefe as "that black lady." There is nothing inherently racist, discriminatory or derogatory about using the word black to describe someone of African-American ethnicity. That conclusion is supported by the existence of such institutions as Black History Month, Black Entertainment Television (BET), The Black Cultural Center at Iowa State University and the Black Student Union at the University of Iowa. Ms. Gangsei's reference to Ms. Deefe as "that black lady who works down here" was no more racist or derogatory than referring to Barack Obama as the nation's first black President. The administrative law judge notes that Ms. Gangsei referred to Ms. Deefe as a lady, a term not at all derogatory and a term that reasonable people sometimes use to indicate a gentlewoman, a female worthy of respect and esteem. The weight of the evidence indicates that the employer was overly quick to perceive racism in connection with the final incident and in connection with the November 18 complaint. Because the final incident that triggered the discharge did not involve misconduct, the evidence fails to establish a current act of misconduct. Ms. Gangsei's alleged rudeness to one or more much younger, less experienced coworkers on or before November 18, 2013 was insufficient to establish misconduct in connection the employment that would disqualify Ms. Gangsei for benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Gangsei was discharged for no disqualifying reason. Ms. Gangsei is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The Agency representative's December 30, 2013, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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