

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNN L ROTH
Claimant

APPEAL NO. 09A-UI-19250-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARSHALLTOWN YMCA
Employer

OC: 11/22/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Lynne L. Roth filed a timely appeal from an unemployment insurance decision dated December 15, 2009, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held January 28, 2010 with Aquatics Director Shelly Lechnir participating for the employer, Marshalltown YMCA. Ms. Roth did not provide a telephone number at which she could be contacted.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Lynne L. Roth was employed as a lifeguard and instructor by Marshalltown YMCA from January 2005 until she was discharged November 13, 2009. On the day of discharge, Ms. Roth swore at another employee. The incident occurred in the pool area and was overheard by members of the YMCA. Shortly before that incident, Ms. Roth had threatened to remove some circulation fans belonging to other members of the YMCA from the locker room area. The members complained about that incident. Ms. Roth had received a warning in April 2009 because of rude behavior towards a juvenile in one of her swimming classes. She had received a warning in July 2009 because of attendance.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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 evidence establishes that the claimant swore at a coworker in front of members of the employer's organization and that moments before she had threatened to remove personal property belonging to other members. The evidence establishes that the claimant had also received warnings for attendance and for inappropriate behavior towards a juvenile member of the Y earlier in the year. Taken together the evidence is sufficient to establish misconduct. Benefits are withheld.

DECISION:

The unemployment insurance decision dated December 15, 2009, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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