

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**BEATRICE C DONMOR**  
Claimant

**TPI IOWA LLC**  
Employer

**APPEAL 19A-UI-04943-S1-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/19/19**  
**Claimant: Appellant (2)**

---

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Beatrice Donmor (claimant) appealed a representative's June 10, 2019, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with TPI Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 15, 2019. The claimant participated personally. The employer provided a telephone number but could not be reached at the time of the hearing. The administrative law judge left two messages for the employer.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 9, 2015, as a full-time infusion tank worker. She does not remember receiving a handbook or any disciplinary actions prior to termination. English is not the claimant's first language.

On or about May 24, 2019, the claimant was working with Co-worker Carlos who said in English, "You and I will go to the hotel". The claimant said, "Why you have to say that. Don't say that to me again." Later, Co-worker Carlos was speaking in Spanish to other workers. He pointed his finger at the claimant, laughed and rubbed his buttocks with his hand. The claimant did not know what he was saying and she felt bad. She said, "Why you looking and laughing and speaking your language. Speak English".

Some co-workers who spoke very little English, overheard the claimant and complained to the supervisor. On or about May 27, 2019, the supervisor took statements from the workers. On May 30, 2019, the employer called the claimant at home and terminated her.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not participate in the appeal hearing and no evidence of misconduct was presented at the hearing. The claimant was being harassed and bullied at work. When a co-worker appeared to be making disparaging remarks about her to other co-workers in a language she could not understand, she told him to speak English. The employer terminated the claimant rather than the co-worker making the remarks. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed provided the claimant is otherwise eligible.

**DECISION:**

The representative's June 10, 2019, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/rvs