

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MADIA K FLOWERS
Claimant

PARCO LTD
Employer

APPEAL 15A-UI-06256-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 20, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on July 6, 2015. The claimant participated. The employer participated through Tim McGreevy.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a crew member and was separated from employment on May 6, 2015, when she was discharged.

On May 2, 2015, the claimant was working with the lettuce and became agitated. She was venting and allegedly observed using profanity, which was loud enough for a manager to hear, and potentially customers in the restaurant. The claimant denied using profanity but admits she was “venting.” The claimant worked May 5, and on May 6, 2015, Mr. McGreevy presented the claimant with a verbal warning for the May 2, 2015 incident. He was not on the premises on May 5 to issue the warning. During the discussion, the claimant became argumentative. The employer said the claimant used profanities including “bullshit.” The claimant denied using profanity but said she called the warning “bs.” As a result of the claimant’s response while issuing the disciplinary action, in which the employer believed she repeated the same conduct from the May 2, 2015 incident, she was discharged.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The findings of fact reflect a resolution of the disputed factual issues in this case. The administrative law judge carefully weighed the credibility of the witnesses and the reliability of the evidence and attributes more weight to the employer's version of events. "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. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990).

The undisputed testimony is that the claimant was unhappy with lettuce while working on the line. The testimony was disputed as to whether the claimant said profanity words or was just "venting" and said "bs" to Mr. McGreevy. Regardless, if the claimant said the actual profanity words, or alluded to them, the claimant's conduct was unprofessional and confrontational under the circumstances. The fact that she may have muttered her comments under her breath, and didn't intend for anyone to hear her does not absolve her from culpability. Whether she recalls saying an actual profanity word or not, her venting comments were overheard by a manager, and could have potentially been overheard by customers. Further, the claimant's response to being issued a warning for such conduct was to repeat the conduct, by being argumentative and referring to the warning and incident as "bs." Both incidents go against the employer's interests, as the employer has a right to expect a certain level of civility and professionalism amongst its employees. The claimant's conduct is considered disqualifying misconduct, even without prior completed warnings. Benefits are denied.

DECISION:

The May 20, 2015 (reference 01) 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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css