IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SANDRA S HAMMES
Claimant

AVENTURE STAFFING & PROFESSIONAL
Employer

APPEAL NO. 13A-UI-00525-NT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/02/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Sandra Hammes filed a timely appeal from a representative's decision dated January 9, 2013, reference 02, which denied unemployment insurance benefits finding that the claimant was discharged from work for using profane language on the job. After due notice was provided, a telephone hearing was held on February 13, 2013. Claimant participated. Participating as witnesses for the claimant were Mr. Ron Wheeler, Former Employee and Mr. Rick Wheeler, Former Employee. The employer participated by Ms. Kayla Neuhalfen. Employer Exhibit One was received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Sandra Hammes began employment with Aventure Staffing on June 20, 2011. Ms. Hammes was assigned to work at the Montezuma Manufacturing Company throughout the period that she was employed by Aventure Staffing. Ms. Hammes' employment with Aventure Staffing came to an end on December 4, 2012 after the claimant was removed by the client from her work assignment for using offensive language in the workplace and the claimant was discharged by Aventure Staffing for violating its policy which prohibited the use of inappropriate or offensive language on the job. Ms. Hammes was discharged on December 4, 2012.

On December 4, 2012, Ms. Hammes encountered another female worker who was sitting on the stairs on the way to the Montezuma Company's break area. The issue of this worker sitting on the stairs had been reported by Ms. Hammes to Montezuma supervisory personnel on more than one occasion. The claimant considered it to be a violation of Montezuma policy because at least two signs in the area prohibited employees from sitting on the stairs.

Because supervisory personnel at the Montezuma Company had not taken the action that Ms. Hammes thought appropriate, Ms. Hammes decided to "take things into her own hands"

about the matter. Ms. Hammes asked the other worker if the other worker could read the signs on the wall and when the other worker responded “no” Ms. Hammes responded “you must be too fucking fat to walk up the stairs like the rest of us.” Both workers then continued to argue. The exchange between the parties came to an end at that time, however, the other worker did not let the matter rest but instead made an official complaint to the management of the Montezuma Company about Ms. Hammes’ conduct and her statements.

Although it appears that rough language is not uncommon at the Montezuma facility, it is a violation of Montezuma policy and because an official complaint had been lodged, the Montezuma Company took action and walked Ms. Hammes out of the facility terminating her assignment at that location through Aventure Staffing.

Because the claimant had been discharged from the client location and the use of inappropriate language is also a violation of Aventure Staffing policy and can result in termination from employment, Aventure Staffing made a decision to discharge Ms. Hammes from further employment assignments. The claimant, however, was not immediately informed that she had been discharged by Aventure Staffing and she reported back to Aventure Staffing the next day.

It is Ms. Hammes’ position that the use of inappropriate language is common at the Montezuma worksite and that other employees who engage in that conduct are not discharged and the claimant cites the example of one worker whose inappropriate language was reported to Montezuma and received only a verbal warning from that company.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged from Aventure Staffing under disqualifying conditions. 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 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 insurance benefits. 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).

In this matter the claimant was discharged from her employment with Aventure Staffing because the claimant had made a conscious decision to intervene in a management issue at a client location using vulgar language that was directed to another employee. The evidence in the record establishes that the claimant may not have been discharged had the other employee not made an official complaint or had Ms. Hammes been employed directly by the Montezuma Company.

In this case, however, the claimant's employment relationship was with Aventure Staffing and the claimant was expected to adhere not only to its employment rules but also to the rules of the client employer. Because the claimant's conduct had resulted in an official complaint by the other worker about Ms. Hammes' statements and conduct the client employer elected to remove Ms. Hammes from her long-term job assignment at that work location and walked the claimant out of the plant that day. When the client employer reported Ms. Hammes' conduct to Aventure Staffing, Aventure Staffing also considered it to be a violation of their policy which prohibits inappropriate or offensive language being used in a client or workplace location.

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful or name-calling context may be recognized as misconduct disqualifying the employee from the receipt of unemployment insurance benefits. See Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995).

The evidence in the record establishes that Ms. Hammes intentionally made inappropriate remarks to another worker in a confrontational, disrespectful and name-calling context. The claimant's conduct resulted in an official complaint from another worker to the client employer which caused the claimant to be removed from the client location. The claimant's use of vulgarity was also in violation of Aventure Staffing's policies which were designed to keep temporary workers at their work locations and to avoid jeopardizing Aventure Staffing's contracts with the clients by mandating that temporary workers not engage in that type of conduct.

Although sympathetic to the claimant's situation the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant was discharged under disqualifying conditions. Benefits are withheld.

DECISION:

The representative's decision dated January 9, 2013, reference 02, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in

and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

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