

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CYNTHIA R CRITES
Claimant

DAC INC
Employer

APPEAL 16A-UI-05648-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/24/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 12, 2016 (reference 01) unemployment insurance decision that denied benefits based upon her discharge for conduct not in the best interest of her employer. The parties were properly notified of the hearing. A telephone hearing was held on June 30, 2016. The claimant, Cynthia Crites, participated and was represented by attorney Jason Lehman. The employer did not participate. Claimant's Exhibit A and B, as well as Exhibit One were received into evidence.

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: Claimant was employed full time as a direct support professional from May 22, 2014 until this employment ended on April 21, 2016, when she was discharge.

On April 13, 2016, while at work, one of claimant's consumer's became combative with her. The consumer had begun throwing things at and was hitting claimant. Claimant knew she had to get out the situation to call for help but the consumer was blocking all of her exits. In order to allow herself to safely exit the area claimant momentarily blocked the consumer's attempts to hit her by grabbing her wrist while she repositioned herself to be able to use an exit. Claimant then called for assistance. Claimant was put on leave pending an investigation.

On April 18, claimant was called in for an interview and permitted to explain what happened. Three days later, on April 21, claimant was notified she was being terminated. The employer stated it did not approve of the way claimant handled the situation, specifically, it did not approve of the fact that claimant had put her hands on the consumer. No suggestions or direction on how to handle the situation differently were given. Prior to this incident, all employees had been advised not to put their hands on consumers but had been given no direction or training on how to deal with situations such as this. Claimant testified that one year

prior there was a consumer that became physical with multiple employees, including herself, on several occasions requiring employees to place their hands on the consumer. Neither claimant nor the other employees were disciplined or otherwise instructed that their actions were inappropriate. Claimant had no disciplinary history prior to her termination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Claimant was discharged because the employer did not like how she handled a confrontational situation with a consumer. The conduct for which claimant was discharged was merely an isolated incident. While claimant admitted that staff had previously been instructed not to place their hands on consumers, she also testified that she and other employees had engaged in similar conduct before without consequence. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Claimant had no prior disciplinary history. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

DECISION:

The May 12, 2016 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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