

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**JODEE E EAKINS**  
Claimant

**APPEAL NO. 19A-UI-03114-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOSPICE INC**  
Employer

**OC: 03/17/19**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jodee Eakins (claimant) appealed a representative's April 3, 2019, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Hospice (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 3, 2019. The claimant participated personally. The claimant's husband Derek Eakins and Heather Bible, a former coworker, participated in the hearing. The employer participated by Angela Rozenboom, Executive Director. The employer offered and Exhibit 1 was received into evidence.

**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 June 6, 2013, as a full-time hospice house aid. She signed for receipt of the employer's handbook on June 6, 2013. On August 10, 2015, and July 6, 2018, the employer issued the claimant written warnings for dress code violations.

On March 13, 2019, the claimant was discussing her personal situation with co-workers. The claimant was upset when her co-worker commented that her "husband needs to man up". On March 17 and 18, 2019, the claimant decided to work without talking to her supervisor and co-worker. On March 18, 2019, the claimant was in the dirty utility room when the two approached the door and asked, "What's the problem". There was no room for the two to come into the room. The claimant said she was just coming to work and doing the job the best she could. Her supervisor told her she had an attitude the last two days and it needed to be addressed. The supervisor told her to leave her attitude at home. The claimant felt bullied and entrapped when the two stood at the door, even though she left the room and went to the library. Later, in the library her supervisor asked her if she needed to find a new job or a new shift. The claimant told her it was not her place to question her and she liked her shift. The supervisor left.

On March 18, 2019, the supervisor reported the claimant's behavior to the executive director. The executive director questioned the supervisor more extensively. The supervisor described an incident where the claimant put a dust mop between her legs like a penis.

On March 19, 2019, at 8:00 p.m., the claimant called the executive director to complain about the events of March 18, 2019. The executive director was in her car with a non-employee and asked the claimant to wait until the following day.

The executive director interviewed two other employees who witnessed the claimant with the dust mop between her legs pretending it was a penis. A fourth employee said the claimant made inappropriate sexual comments in her ear while the employee was inserting a catheter in a patient. The employer interviewed the claimant on March 20, 2018. When asked about the inappropriate use of the dust mop, the claimant said she used Lysol wipes when dusting. She said she whispered "good morning" in the fourth employee's ear. The claimant said she made sexual gestures and comments with staff to keep things "relaxed". The employer terminated the claimant on March 20, 2019.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was 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 claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

**DECISION:**

The representative's April 3, 2019, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs