

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ANNA C ROBINSON
Claimant

APPEAL NO: 19A-UI-02603-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

R C CASINO LLC
Employer

OC: 03/03/19
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 21, 2019, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 15, 2019. The claimant participated in the hearing with Attorney Leonard Bates. Sara Pasha, Human Resources Business Partner, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time VIP Host for R C Casino from May 18, 2016 to March 5, 2019. She was discharged for allegedly violating the employer's workplace violence policy.

On February 28, 2019, the claimant and Supervisor Eric Neas were preparing for a VIP event. There were balloons and the claimant wanted to curl the end of the ribbons holding the balloons. She asked Mr. Neas where he kept the scissors and he said in his top drawer "in case he needed to shank someone." He told her to put the scissors back where they belonged and not to "get any ideas." The claimant responded, "I wouldn't use scissors Eric," and he said, "what would you do, shoot me?" The claimant said, "You would be the first" and he replied he would "sic Sandy on you" and the claimant said she (Sandy) "would be next." Both parties were laughing and joking throughout the conversation. Later, however, Mr. Neas reported the conversation to Manager Kevin Hearn who reported it to Marketing Director Ryan Lounsberry and human resources. The claimant was suspended when she arrived for work March 1, 2019. She told the employer that it was good natured bantering and Mr. Neas had joked about using the scissors to "shank" someone but when the claimant asked Mr. Neas about that comment he denied it. There were two other employees in the room. VIP Host Yvette Clay told the employer she did not hear anything. VIP Host Robert Steffen said he heard the claimant's comments but not Mr. Neas' comment. The employer made the decision to terminate the

claimant's employment as she was on a final written warning for using profanity. The claimant was discharged March 5, 2019.

REASONING AND CONCLUSIONS OF LAW:

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

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 proving disqualifying misconduct. *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 substantial and 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).

The claimant admits making the comments about shooting Mr. Neas "first" but argues it was playful, good natured banter between two employees and she never intended her words to be considered a threat of any kind. The employer agrees the claimant and Mr. Neas were not arguing and neither was angry when making comments about shanking or shooting a co-worker. While both comments may have been in bad taste and both the claimant and Mr. Neas may have used poor judgment given the current state of affairs in this country, the administrative law judge cannot conclude the claimant's comments rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The March 21, 2019, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs