

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATIE J KING

Claimant

APPEAL NO. 10A-UI-07320-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION

Employer

Original Claim: 04/18/10

Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Katie King, filed an appeal from a decision dated May 12, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 12, 2010. The claimant participated on her own behalf. The employer, ABCM, participated by Administrator Amber Hunt.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Katie King was employed by ABCM from December 20, 2007 until April 16, 2010 as a part-time laundry aid. On April 16, 2010, Administrator Amber Hunt received a report from another laundry aid, Deb Decker, about an incident involving Ms. King that had occurred on April 10, 2010.

Ms. Decker alleged Charge Nurse Kelley Philo had come to the laundry room and asked Ms. King if she had seen a particular garment belonging to a resident. The claimant allegedly said she had not and “that fucking bitch has been up my ass all week” regarding it. Ms. Philo and Ms. King then looked for the garment and quickly found it in the lost and found basket. The charge nurse returned the garment to the resident and later reported to Ms. King it was the correct garment. Ms. King then allegedly said, “Good, and tell that fucking bitch she can shove it up her ass.” Ms. Philo told the claimant her to come in to work the next day with a better attitude and she did.

After receiving the report, Ms. Hunt interviewed Ms. Philo, who said she did not report it because she felt she had already handled the claimant’s conduct directly. She received a verbal warning from the administrator to report all such incidents directly to her in the future. Ms. King was then interviewed and she denied everything, stating she had found the garment and returned it to the resident herself, and the resident thanked her. The claimant was sent

home and Ms. Hunt reviewed the information. She decided to discharge the claimant for insubordination and for violating the residents' rights policy by not looking for the garment diligently when the resident first asked her about it.

REASONING AND CONCLUSIONS OF LAW:

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 to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case, there were two witnesses to the alleged incident and neither one of them provided testimony at the hearing even though they are still employed by ABCM. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of May 12, 2010, reference 01, is reversed. Katie King is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw