

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHLEEN M. PITTMAN**  
Claimant

**APPEAL NO. 09A-UI-06833-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 04/05/09**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated May 1, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 15, 2009. Claimant participated. Employer participated by Deb Nelson, Dietary Assistant Supervisor, and Heather Dathen, Dietary Services Supervisor. The employer was represented by Josh Burrows, who is affiliated with TALX. The record consists of the testimony of Deb Nelson; the testimony of Heather Dathen; the testimony of Kathleen Pittman; and Employer's Exhibits 1-6.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant began working for the employer on October 22, 2008. The employer is a nursing home in Waterloo, Iowa. The claimant was terminated on March 25, 2009. The final incident that led to the claimant's termination occurred on March 24, 2009. The claimant worked the 12:00 p.m. to 8:00 p.m. shift. When she came on duty, she was assigned a list of cleaning tasks. The claimant was very upset and would not finish the work that was assigned to her. Toward the end of the shift, the claimant and the other employees were asked to assist the cooks in putting away the pots and pans. The claimant just stood there and said, "What the fuck." Deb Nelson, her immediate supervisor, sent her home.

The incident on March 24, 2009, came after the claimant had been placed on a final warning after an incident on February 3, 2009. The claimant was cited then for excessive break time; using the store room to make cell phone calls in contravention of express company policy forbidding the use of cell phones on company time; and failing to complete a job task. The claimant was informed that the next incident would lead to termination. The claimant was suspended without pay for three days due to violation of the cell phone policy and using foul

offensive language in the dining room. The claimant was also cited for arguing with her supervisor. Two warnings were issued on December 30, 2008, for violation of cell phone policy and failing to complete jobs assigned to her by the employer. On November 22, 2008, the claimant received a written warning for not doing a job as assigned. There were also verbal warnings for using her cell phone in addition to the written warnings.

## **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 evidence in this case has established misconduct that disqualifies the claimant from receiving unemployment insurance benefits. During her short tenure with the employer, the claimant received six written warnings for repeated failures to do the work that was assigned to her; violating the cell phone policy; and using foul language in the workplace. This repeated conduct shows that the claimant willfully and deliberately violated and disregarded the employer's policies. Her actions are more than inadvertences or ordinary negligence in isolated instances or good faith errors in judgment.

One of the most basic duties an employee owes an employer is to do the work that is assigned. The claimant failed to do her job on several occasions. Despite being told about the cell phone policy and receiving written warnings about using the phone while working, the claimant continued to deliberately defy her employer. In addition, the use of profane and vulgar language is not acceptable in the workplace. The claimant used such language on more than one

occasion and was specifically warned about it. Since misconduct has been established, the claimant is not entitled to benefits.

**DECISION:**

The decision of the representative dated May 1, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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