

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JENNIFER R GREEN
Claimant

GOOD SAMARITAN SOCIETY INC
Employer

APPEAL NO. 17A-UI-01922-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/29/17
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 13, 2017, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 14, 2017. Claimant participated personally. Employer participated by Ron Calvert and Joanna Miller. Claimant's Exhibits A through B and Employer's Exhibits 1 through 2 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 30, 2017. Employer discharged claimant on January 30, 2017 because claimant told an employee – who happened to be her sister-in-law – “Fuck You” and slammed a chair into a desk during a private meeting at work. The sister-in-law responded in kind.

Both claimant and her sister-in-law reentered the room after both had walked out for a period. Both stated that they believed that they could move on from the issue “in time.”

Employer stated that claimant was not remorseful when she was addressed about the January 27, 2017 incident on January 30, 2017. Claimant stated that she was remorseful, and hugged her sister-in-law prior to their meetings with company executives on January 30, 2017. The sister-in-law wrote a letter to the Iowa Workforce Development explaining that the parties had moved on from the comments.

Prior to this incident, claimant had gone to employer explaining how awkward it was that she was directly overseeing her sister-in-law.

REASONING AND CONCLUSIONS OF LAW:

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the

employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra. In contrast, 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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. 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. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Iowa courts have found that an employee's use of vulgar language can rise to the level of substantial misconduct if it is uttered in front of customers, *Zeches v. Iowa Department of Job Service*, 333 N.W.2d 735, 736 (Iowa Ct. App. 1983), if it is accompanied by a refusal to obey supervisors, *Warrell v. Iowa Department of Job Service*, 356 N.W.2d 587, 590 (Iowa Ct. App. 1984), if it is done repeatedly, *Carpenter v. Iowa Department of Job Service*, 401 N.W.2d 242, 245-46 (Iowa Ct. App. 1986), if it is done in a confrontational manner, *Henecke v. Iowa Division of Job Service*, 533 N.W.2d 573, 576 (Iowa Ct. App. 1995), or if it is accompanied by a threat, *Myers*, 462 N.W.2d at 738; *Deever v. Hawkeye Window Cleaning, Inc.*, 447 N.W.2d 418, 420 (Iowa Ct. App. 1989). Courts from other jurisdictions have not found misconduct where an employee used bad language in a private conversation. See, e.g., *Benitez v. Girlfriday, Inc.*, 609 So. 2d 665, 667 (Fla. Dist. Ct. App. 1992) (holding no misconduct where an employee called branch manager a "fucking son of a bitch" in a private telephone conversation held out-of-earshot of fellow employees and customers); *Kennedy's Piggly Wiggly Stores, Inc., v. Cooper*, 419 S.E.2d 278, 281-82 (Va. Ct. App. 1992) (holding no misconduct where an employee told chief executive officer he was "full of shit" in a private meeting outside the presence of any customers or other employees). Here, claimant was speaking in private, with her sister-in-law and was not directing her single, foul statement to her superiors in a sign of disrespect.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning foul language. The last incident, which brought about the discharge, fails to constitute misconduct because this one-time incident was a product of frustrations with a sister-in-law, was not directed at management or customers, and was done during a private meeting to air grievances. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated February 13, 2017, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/rvs