

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**NUSRETA HADZIC**  
Claimant

**CENTRAL IOWA HOSPITAL CORP**  
Employer

**APPEAL 17A-UI-11872-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/15/17**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 8, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on December 8, 2017. Claimant participated personally and through interpreter 10655 with CTS Language Link. Employer participated through human resources business partner Kari Buckalew. Employer's Exhibit 1 was received.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 24, 2002. Claimant last worked as a full-time housekeeper. Claimant was separated from employment on October 17, 2017, when she was terminated.

On October 12, 2017, at 9:40 a.m. a manager entered the break room and asked how the day was going to be. Claimant jumped up with an angry facial expression, pointed toward the manager, and yelled, "You need to assign someone to do the cores. You've got someone running around, checking rooms, and doing nothing while we are so busy." Claimant made comments toward a peer, stating, "You were in here wandering around yesterday while we were working." The peer was in the workplace on her day off to introduce her baby to co-workers. Claimant told the manager that she favored a specific co-worker. The manager told claimant she was violating employer's values. Claimant stated the manager was unfair, favors a co-worker, and no one likes the manager. The manager invited claimant into her office. Claimant continued to yell at the manager. The manager tried to calm claimant down. The manager tried to explain the co-worker was actually present at work trying to introduce her baby. Claimant did not calm down. The manager sent claimant home. Claimant walked out and continued to yell at her co-workers.

The conduct was reported, and employer conducted an investigation which included interviewing the seven employees who were also present in the breakroom. The employees confirmed claimant engaged in the conduct.

Employer put claimant on probation on November 13, 2016, for speaking in a raised, disrespectful voice to her supervisor on several occasions.

Employer gave claimant a written warning on June 29, 2016, for speaking in a defensive and disrespectful manner toward her supervisor.

Employer terminated claimant's employment on October 17, 2017 for creating dissension in the workplace by repeatedly disrespecting and raising her voice at her supervisor.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Claimant spoke in a raised voice in a disrespectful manner to her supervisor after having been warned. This is disqualifying misconduct.

**DECISION:**

The November 8, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Decision Dated and Mailed

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