

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SILEENA R HENDLEY
Claimant

APPEAL NO. 11A-UI-03593-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 01/30/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 15, 2011, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on April 12, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Gary Nelson, attorney at law. Treve Lumsden participated in the hearing on behalf of the employer with witnesses Tina Wendt and Judy Jenkins. Exhibits One through Seven were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a certified nursing assistant and medication aide from July 3, 2000, to January 19, 2011.

On January 19, 2011, the claimant became upset about the dining room not being properly staffed. She came into a quality assurance meeting where the administrator and director of nursing were meeting with several employees. She told them that she has something to say and wanted everyone to hear it. The claimant then informed the group that they needed to stop having so many damn meetings and to help with the residents. She told the administrator that if she wanted to be an administrator, “be an administrator,” and director of nursing if she wanted to be a DON, “be a DON.” She said the care in the facility sucked, was the worst it had been in 15 years, and she would not “bring a fucking dog” there. She complained that no one thought she did a “fucking thing” and everyone thought she was “fucking the system” because she was receiving workers’ compensation. She insisted that she was there for the residents and everyone else needed to be too. The claimant then left the room.

The administrator sent the claimant home. On January 20, 2011, the administrator discharged the claimant for insubordination and using profanity in the meeting on January 19.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

In Myers v Employment Appeal Board, 462 N.W.2d 736 (Iowa App. 1990), the court considered whether an isolated instance of profanity used in the workplace could constitute work-connected misconduct as defined by the unemployment insurance law. While the court ruled that such language could constitute disqualifying misconduct, the court cautioned that the language used must be considered with other relevant factors, including the context in which it was said and the general work environment. The court ruled that an employer has the right to expect decency and civility from its employees. The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct. Id. at 738. The evidence establishes the claimant's use of profanity on January meets the standard of misconduct. The evidence establishes this language was why she was discharged, not her work-related injury as the claimant asserts.

DECISION:

The unemployment insurance decision dated March 15, 2011, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw