

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JAMES C SAMPSON
Claimant

APPEAL NO: 18A-UI-07534-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

OC: 06/24/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 12, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 1, 2018. The claimant participated in the hearing. Jackie Bentley, Program Director, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time direct support provider for REM Iowa Community Services from March 11, 2015 to June 26, 2018. He was discharged after an argument with Program Supervisor Jami Coppess.

On June 21, 2018, the claimant was working at one of the employer's residential homes for clients with brain injuries, mental health issues, and intellectual disabilities. He left to run an errand leaving the residents in the care of Direct Support Provider Jennifer. While he was gone Ms. Coppess returned with a resident from a medical appointment. She asked where the claimant was and Jennifer indicated he went to get a soda. Jennifer texted the claimant and told him Ms. Coppess was "flipping out" because the claimant was not there. The claimant arrived a few minutes later and asked Ms. Coppess why she was "flipping out" and Ms. Coppess asked him what he was talking about. The claimant responded with a raised voice that he did not know what "you are flipping out about" and used profanity in speaking to her. Ms. Coppess also used profanity, became upset, went outside and called the program director to ask if she could have permission to send the claimant home because he was "escalated." The program director told Ms. Coppess she could send the claimant home. Ms. Coppess went back inside and instructed the claimant to leave. He refused to do so until after Ms. Coppess called the program director a second time.

On June 22, 2018, the employer met with the claimant to hear his side of what took place June 21, 2018. The employer also interviewed Jennifer and the two clients who were present. After reviewing the information the employer terminated the claimant's employment June 26, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 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 disqualification shall continue 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 of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

Both the claimant and Ms. Coppess used profanity during their argument but the employer's witness did not know specifically what was said beyond "a few choice words." Without knowing exactly what was said, the administrative law judge cannot find the claimant's use of profanity rises to the level of misconduct. The claimant went into the confrontation with Ms. Coppess already angry because of Jennifer's text saying Ms. Coppess was "flipping out" and he escalated the situation. That said, however, while the claimant's behavior was inappropriate and unprofessional, this was an isolated incident of misconduct. As such, the administrative law judge finds the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The July 12, 2018, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs