

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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CARE INITIATIVES  
c/o JOHNSON & ASSOCIATES  
PO BOX 6007  
OMAHA NE 68106-0007

Appeal Number: 04A-UI-04359-ET  
OC: 03-28-04 R: 03  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 13, 2004, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 1, 2004. The claimant participated in the hearing. Connie Sevier, Director of Nursing; Kathy Delaney, Charge Nurse; Bill Robinson, Administrator; and Roxanne Bekaert, Employer Representative, participated in the hearing on behalf of the employer.

#### 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 CNA for Care Initiatives from May 29, 2003 to March 13, 2004. She was discharged for insubordination after she and Charge Nurse Kathy Delaney had a series of run-ins and an argument March 13, 2004. The claimant was helping a co-worker on another hall move a resident when Ms. Delaney came into the room and asked the claimant "what the hell (she) was doing" and stated she needed to "get your ass back to your hall." Later in the shift, the claimant was shaving a resident in his room when Ms. Delaney came in and started to yell at her. The claimant said, "We aren't going to do this in front of the residents" but when Ms. Delaney continued, the claimant told her to "back off" and stop yelling and said she had been "riding (her) butt from the start." Ms. Delaney stated all the nurses disliked the claimant and she needed to quit. The claimant responded that she was not going to quit. The argument continued with both individuals yelling until Ms. Delaney finally told the claimant to clock out and leave and the claimant refused. Ms. Delaney eventually took the claimant's time card and clocked her out. The claimant left and contacted Administrator Bill Robinson and asked him if she was going to lose her job and he said no, but advised her to take the weekend off and they would talk about it on Monday. Only hours after that conversation, however, Connie Sevier, DON, called the claimant and told her that her employment was terminated for insubordination. The claimant had received a written warning December 2, 2003, for work performance and a verbal warning February 10, 2004, for using profanity.

#### 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:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The claimant was discharged for insubordination. She had been warned about a performance issue and about use of profanity, but the March 13, 2004, incident was the only act of insubordination documented by the employer. While the claimant's behavior in dealing with Ms. Delaney was not appropriate or professional, Ms. Delaney "yelled at" the claimant several times that night and used profanity towards her before the claimant lost her temper and refused to clock out. Additionally, the fact that Ms. Sevier discharged the claimant without listening to her side of the story and admitted during the hearing that she would stand behind Ms. Delaney "no matter what," indicates an unfair bias against the claimant. Under the circumstances of this case, the claimant's reaction to Ms. Delaney's confrontational manner was at worst the result of unsatisfactory conduct, inadvertence or ordinary negligence in an isolated instance or a good faith error in judgment or discretion. Consequently, the administrative law judge concludes the employer has not met its burden of proving disqualifying job misconduct as defined by Iowa law. Benefits are allowed.

#### DECISION:

The April 13, 2004, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kjf