

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY P MC DOWELL

Claimant

APPEAL NO: 13A-UI-11189-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARMELITE SISTERS FOR THE AGED

Employer

OC: 09/01/13

Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 23, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Heather Warren, Angel Lyle, the food service supervisor, and Jennifer Dietz, Lyle's assistant, appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting a current act of work-connected misconduct?

FINDINGS OF FACT:

The claimant started working as a full-time dietary aide for the employer in June 2012. During his employment the claimant received some warnings. On March 26, 2013, the claimant received a written warning and a three-day suspension for failing to immediately wash some pots and pans a cook asked him to do. The claimant disagreed that he refused to wash the pots and pans. On April 19, 2013, the employer gave the claimant a final written warning after several nursing staff complained about him. The employer talked to the claimant about the tone of his voice and how loud he talked. (Employer Exhibit Two.) On July 25, 2013, the employer gave the claimant a written warning for leaving work without authorization. (Employer Exhibit One.) This written warning informed the claimant that if he did not make immediate improvements, he would be discharged.

On September 3, the claimant was scheduled to work 6:30 a.m. to 2:30 p.m. At the beginning of his shift, the cook learned a resident wanted some strawberries. The cook asked another employee to cut up more strawberries. When the claimant asked the cook if he should have gotten those strawberries, she indicated this was not his concern. The claimant felt the cook was rude to him. He later reported the cook's conduct to Lyle.

After Dietz came to work, the cook asked Dietz if she would stay in the kitchen with her because she did not want to be alone with the claimant. The cook told Dietz that the claimant had been “pushy” with her and she did not feel comfortable with him because he was making a lot of noise by pushing garbage cans around and responded to her directions by saying “UHHS”.

A short time later, Dietz heard the claimant and the cook arguing about whose responsibility it had been to cut up strawberries. Dietz told both of them to stop. They stopped their verbal confrontation. The claimant continued working the rest of his shift without any other incidents.

After the cook reported problems with the claimant and he reported problems with the cook that morning, the employer investigated. The employer concluded the claimant had been insubordinate to the cook when he continued asking her about whose responsibility it was to cut up strawberries. At the end of the day, the employer discharged the claimant for the incident with the cook that morning.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 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. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established business reasons for discharging the claimant. The facts do not establish that the claimant intentionally disregarded the standard of behavior the employer had a right to expect from him. Since the cook did not testify at the hearing, the employer relied on and presented hearsay information at the hearing. As a result, the claimant's testimony must be given more weight about what happened between the claimant and the cook than the

employer's version of events. The claimant's questions may have irritated the cook, but the evidence does not establish that he was insubordinate. Therefore, the employer did not discharge him for a current act of work-connected misconduct. As of September 1, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's September 23, 2013 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit a current act of work-connected misconduct. As of September 1, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employers' account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs