

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE K WOODBURY**  
Claimant

**APPEAL NO. 15A-UI-02751-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MASON CITY CLINIC PC**  
Employer

**OC: 02/01/15  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Michelle Woodbury filed a timely appeal from the February 25, 2015, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that she had been discharged for misconduct in connection with the employment. After due notice was issued, a hearing was held on April 6, 2015. Ms. Woodbury participated. Dana Young represented the employer and presented additional testimony through Kristie Whitehill, Toni Kreitzer and Amy Graven. Exhibit Two was received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Michelle Woodbury was employed by Mason City Clinic, P.C., as a full-time switchboard operator from February 2014 until February 5, 2015, when Kristie Whitehill, Front Operations Manager, and Dana Young, Administrator, discharged her from the employment. Ms. Woodbury's duties involved answering incoming patient calls and routing them to the appropriate area of the multiple-specialty medical clinic. Ms. Woodbury's work station was adjacent to a patient waiting area. Ms. Woodbury's secondary duties involved receiving patients for appointments. Ms. Whitehill was Ms. Woodbury's immediate supervisor.

The final incident that triggered the discharge occurred on February 4, 2015 and followed a meeting between Ms. Whitehill and Ms. Woodbury. During the meeting, Ms. Whitehill discussed multiple complaints the employer had received concerning Ms. Woodbury's failure to exercise appropriate discretion while performing her duties in the medical clinic. Ms. Woodbury was in the habit of failing to exercise appropriate discretion in the medical clinic. Toward the end of the meeting on February 4, 2015, Ms. Woodbury asserted that Ms. Whitehill never had anything good to say about her. Ms. Whitehill sent Ms. Woodbury home, with pay, while she continued to investigate the complaint that had prompted the February 4 meeting. Ms. Whitehill was angry

when she returned to her work area. Once there, she announced, "These bitches turning me in are going to be doing my fucking job." Several coworkers in the immediate area heard the comment. These included Tony Kreitzer, Float Receptionist. The comment was uttered within earshot of patients in the waiting area. Several employees reported the conduct to Ms. Whitehill and Ms. Woodbury was discharged the next day. The employer had a policy that required professional conduct befitting a professional medical clinic. The policy was set forth in the handbook the employer had provided to Ms. Woodbury earlier in the employment.

While the profane utterance on February 4, 2015 triggered the discharge and was the primary basis for the discharge, the employer considered multiple earlier instances in which Ms. Woodbury had failed to exercise appropriate discretion in the medical clinic. These included engaging in telephone and face-to-face discussion of her personal affairs at the reception desk in the presence of patients and discussion of matters concerning patients with employees who did not need to be privy to such matters.

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

Iowa Code § 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.

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 proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. Warrell v. Iowa Dept. of Job Service, 356 N.W.2d 587 (Iowa Ct. App. 1984).

The weight of the evidence in the record establishes misconduct in connection with the employment based on Ms. Woodbury's angry utterance at the reception desk. The employer presented testimony from Ms. Kreitzer, who was just one of several employees to hear the utterance and report it to the employer. The evidence establishes no reason to discount the reliability or credibility of Mr. Kreitzer's testimony. Ms. Kreitzer was new to the work area and did not have any agenda regarding Ms. Woodbury's employment. That Ms. Woodbury made the inappropriate comment is further supported by the pattern of conduct leading up to that incident, wherein Ms. Woodbury regularly failed to exercise discretion and adhere to appropriate decorum while working in the medical clinic.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Woodbury was discharged for misconduct. Accordingly, Ms. Woodbury is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits.

**DECISION:**

The February 25, 2015, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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