

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICOLE L FREEBORN**  
Claimant

**APPEAL NO. 12A-UI-12568-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEALTHY CONNECTIONS INC**  
Employer

**OC: 09/23/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated October 11, 2012, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on November 15, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Kim Mongar. Rachael Owens participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as a direct care worker for the employer from January 22, 2010, to August 15, 2012. She was informed and understood that under the employer's work rules, the use of profanity was prohibited. She received a warning about using profanity at work on May 15, 2012.

The claimant did not work after August 15 because the client she was providing service to was receiving medical treatment.

On August 30, 2012, the claimant called the office to see if her paycheck was available. An employee told her the check was not there. The claimant spoke to the mother of her client, Kim Mongar, about the fact that she had not received her pay. Mongar called Valerie Owens, the executive director, and asked about the claimant's paycheck. Owens said she would look into it and get back to Mongar as soon as possible. Later, when Owens had not contacted Mongar, Mongar called again and found out Owens had left for the day. Mongar lost her temper with the assistant who took the call and directed profanity toward her.

For some reason, the employer believed that it was the claimant who called and directed profanity at the assistant. On September 14, 2012, the employer sent a letter discharging the claimant for her alleged conduct on August 30.

**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).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. 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.

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, 11 (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. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. I believe Mongar's testimony that she was the one who used profanity on the phone. The claimant then was discharged for something she did not do. I believe the claimant's conduct in complaining to her client's mother about her paycheck was inappropriate, but that is not why the employer discharged the claimant. The discharge was not for work-connected misconduct.

**DECISION:**

The unemployment insurance decision dated October 11, 2012, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/kjw