

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROGENA A JONES
Claimant

APPEAL NO: 17A-UI-12061-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

OC: 10/29/17
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Rogena A. Jones, the claimant, filed a timely appeal from a representative's unemployment insurance decision dated November 17, 2017, reference 01 which denied unemployment insurance benefits finding that the claimant was discharged from work on November 1, 2017 for conduct not in the best interest of the employer. After due notice was provided, a telephone hearing was held on December 14, 2017. Claimant participated. Employer participated by Mr. Brian Clark, Human Resource Coordinator. The Employer's Exhibits 1 through 6 were offered but not received into evidence because the claimant had not received copies of the Exhibits and objected to their admission into evidence.

ISSUE:

Does the evidence in the record establishes that the claimant engaged in job related misconduct sufficient to warrant the denial of unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: Rogena Jones was employed by the captioned employer dba Harmony House from June 15, 2017 until November 1, 2017 when she was discharged from employment. Ms. Jones was employed as a full-time laundry aide and was paid by the hour. Her immediate supervisor was Jessica Crawford.

Ms. Jones was discharged on November 1, 2017 because of an incident that had taken place on October 30, 2017.

On October 30, 2017, Ms. Jones had brought to the attention of her supervisor that laundry had not been properly hung up by a first shift worker. The claimant's supervisor, Ms. Crawford, suggested that the other worker be included when she and Ms. Jones went to the area where the laundry had been hung. The other worker, Malisha, had taken offense because Ms. Jones had brought the error to the attention of Ms. Crawford. While Ms. Jones was speaking to Ms. Crawford, the other worker began making derogatory statements about the 2nd shift work and also about Ms. Jones' complaint. Ms. Jones did not initially respond, however, when the other

worker began referring Ms. Jones as “little girl,” Ms. Jones cautioned the other worker that she should not continue to refer to Ms. Jones as “little girl.” As the parties proceeded to walk, the other worker escalated her verbal attacks by shouting and using vulgar language in the presence of residents also in the area.

As the parties arrived near the human resources office, the worker increased her yelling and cussing, she then yelled “bitch, bring your ass outside... I’m off the time clock now!” The worker then repeatedly challenged Ms. Jones to come outside and engage in a fight. Ms. Jones attempted to direct all further comments to Ms. Crawford, because she did not want to escalate the situation. Ms. Jones denies using inappropriate language or engaging in a threatening or intimidating behavior towards the other worker.

The employer investigated and took statements from some individuals who were present. Because the incident itself was disruptive and a portion of it had taken place in the presence of residents, the employer made a management decision to discharge both the 1st shift laundry worker as well as Ms. Jones.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was discharged from employment under non-disqualifying conditions. 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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness and negligence that equals willful misconduct in culpability. See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Hearsay is admissible in administrative proceedings, however it cannot be accorded the same weight as sworn direct first hand testimony, provided that the first hand testimony is credible and not inherently improbable. When it is in a party's power to produce more direct and satisfactory evidence that is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that parties case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

In the case at hand, Ms. Jones participated personally, provided first hand sworn testimony denying that she was the aggressor in an incident that took place at the employer's facility on October 30, 2017. The claimant testified that she noted a work error of another employee and attempted to confine any information that she had about the error to only her supervisor. At the supervisor's request, the other worker was summoned to the area and immediately became upset and started making derogatory statements about Ms. Jones and 2nd shift workers in general. Ms. Jones first cautioned the other worker about the statements that she was making, but then relied upon Ms. Crawford, the supervisor, who was present to handle the situation as it continued to escalate. Ms. Jones denied that she had used any inappropriate language and that she attempted to direct any comments that she was making to Ms. Crawford instead of the other worker.

The incident culminated with the other worker clocking out, and directing more violent language towards Ms. Jones as she repeatedly challenged Ms. Jones to engage in a physical altercation outside. After reviewing the matter, the employer concluded that both the other worker and Ms. Jones should be discharged from employment.

While the decision to terminate Ms. Jones may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that Ms. Jones was not the aggressor during the incident and that the claimant, to the best of her ability, attempted to contain the escalating incident to save her employment. The administrative law judge finds Ms. Jones to be credible, and finds that her testimony is not inherently improbable. For these reasons, the administrative law judge accords more weight to the claimant's first hand testimony in this matter.

While the decision to terminate Ms. Jones may have been a sound management decision, the evidence in the record does not establish intentional job related misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated November 17, 2017, reference 01, is reversed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn