

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DIANA L LAWSON**

Claimant

**APPEAL NO. 12A-UI-01304-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABCM CORPORATION**

Employer

**OC: 01/01/12**

**Claimant: Appellant (2)**

Section 96.5-2-A – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated February 2, 2012, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 28, 2012. Claimant participated. The employer participated by Linda Grindle, the office manager/human resources coordinator. The record consists of the testimony of Linda Grindle and the testimony of Diana Lawson.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is in the business of long-term care. The claimant worked at a facility located in Bloomfield, Iowa. The claimant was hired on September 1, 1981. Her last day of work was January 4, 2012. She was terminated on January 4, 2012. At the time of her termination, the claimant worked as an activities assistant/dietary aide.

The incident that led to the claimant's termination occurred on December 22, 2011. The claimant was organizing an evening bus trip for the residents to see the lights in the town. The claimant was concerned that there be sufficient help to assist the residents when the bus returned to the facility. There were a lot of people around and the claimant had to raise her voice to be heard.

The claimant also looked at the registration book and went over the evening in her head to make sure that everything was properly arranged. She hit the book with her fist when she realized that all the preparations had been made. She was happy with what was going to occur and was expressing her happiness by hitting the book with her fist.

Another employee lodged a complaint against the claimant for using a loud voice and hitting the book with her fist. This unknown employee or employees regarded the claimant's actions as rude. The employer started an investigation but did not inform the claimant about the investigation. Nothing was said to the claimant about the incident until her termination on January 4, 2012. She continued to work after December 22, 2011.

The claimant had served a three-day suspension in November 2011 and November 2010 for using a loud voice and treating staff rudely.

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

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.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In

order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8) See also Greene v. EAB, 426 N.W.s 2d 659 (Iowa App. 1988) The employer has the burden of proof to establish misconduct.

In this case, the employer has failed to show that the claimant was discharged for a *current* act of misconduct. The issue of “current act” is determined by looking to the date of termination and comparing this to the date the misconduct first came to the attention of the employer. *Id.* The incident that led to the claimant’s termination occurred on December 22, 2011. The claimant was not terminated until January 4, 2012. The employer explained the delay by citing its need to investigate and the holiday season. The delay, however, was two weeks. This is a small employer. The holidays may have had some role to play in the delay, but that does not explain why the claimant was not even told there was an investigation ongoing. Had the employer notified the claimant about the complaint and that there was an investigation ongoing, the issue of whether this was a *current act* of misconduct would likely have been resolved differently.

Since there is no evidence of a current act of misconduct, the claimant cannot be disqualified from receiving unemployment insurance benefits. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated February 2, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/css