

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOANN M BUTLER**

Claimant

**APPEAL 16A-UI-00503-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REM IOWA COMMUNITY SERVICES INC.**

Employer

**OC: 09/06/15**

**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The appellant filed an appeal from the January 12, 2016 (reference 03) unemployment insurance decision that denied benefits based upon her discharge for misconduct. The parties were properly notified of the hearing. A telephone hearing was held on February 3, 2016. The claimant Joann Butler participated and testified. Claimant's witness Arthur Chism also testified. The employer REM Iowa Community Services Inc. participated through human resource business partner Sara Drish.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a direct support professional, providing direct care for adult with intellectual disabilities, from January 10, 2013 until this employment ended on December 17, 2015; when she was discharged from employment.

On December 15, 2015, claimant sent an email to her immediate supervisor David Wetherall because she believed she was not given her full Christmas bonus. The email contained several profanities which violated the employer's Code of Business Conduct. Later that same day claimant called the employer to speak to Wetherall. An administrative assistant answered the phone and asked who was calling. Claimant refused to provide her name and asked to be transferred to Wetherall. When the administrative assistant asked for her name again claimant allegedly responded with another expletive.

Prior to December 15, claimant had expressed concerns with the way she was being treated by her coworkers after filing a worker's compensation claim. This occurred during an April 2, 2015 conversation between claimant and Drish. During this conversation claimant became confrontational with Drish and was asked to leave the meeting. An investigation was initiated by Drish and found claimant's allegation to be unsubstantiated. A letter was sent to claimant

explaining the investigative process and findings. The letter informed claimant while it was understandable that she might be feeling frustrated that she was expected to remain professional at all times and that yelling in the workplace was not professional.

On December 17, 2015, claimant was called into a meeting with Wetherall and Drish to discuss the December 15 incidents. Claimant denied using any curse words towards the administrative assistant and informed Drish that she did not come to the meeting to be reprimanded. At this point claimant's friend, Chism, entered the office and told Drish and Wetherall that they could not continue to speak to claimant in the manner they were addressing her. The meeting eventually ended with claimant being terminated based on her behavior on December 15 and her unwillingness to accept coaching on December 17, given the previous directive regarding appropriate workplace conduct.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related misconduct. Benefits are denied.

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 use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made.” *Myers v. Emp’t Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Claimant is accused of sending an email with several profanities to her supervisor and using an expletive towards a coworker on December 15, 2015. While claimant denies using any vulgar language toward her coworker, she admits to using the language described in the email. Claimant also admits that she knew such language was inappropriate and violated the code of conduct. Claimant acknowledged she was not willing to receive counseling from Drish on her behavior. The ALJ is cognizant of the fact that claimant was feeling frustrated with her work situation; however, such feelings are not an excuse for engaging in this type of behavior in the workplace. Claimant’s behavior on December 15 and 17, 2015 is considered disqualifying misconduct, even if she had not been given prior warning. Benefits are denied.

**DECISION:**

The January 12, 2016 (reference 03) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

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