

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**OLA K REAFLENG**

Claimant

**APPEAL NO. 13A-UI-05411-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NISHNA PRODUCTIONS INC**

Employer

**OC: 04/14/13**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated May 3, 2013, reference 01, which denied unemployment insurance benefits finding that she was discharged from work for violation of a known company rule. After due notice, a hearing was held in Council Bluffs, Iowa on July 3, 2013. Claimant participated. The employer participated by Ms. Wendy Davies, Director of Services; Ms. Melissa Bonnes, Quality Assurance Specialist/Program Manager; Ms. Linda Young, Team Leader; and Marcee Bisbee, Human Resource Manager. Employer's Exhibits A, B, C, D and E and Claimant's Exhibits 1, 2, 3 4 and 5 were received into evidence.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Ola Reafleng was employed by Nishna Productions, Inc. from April 15, 2009 until April 17, 2013 when she was discharged from employment. Ms. Reafleng most recently worked as a full-time community living specialist and was paid by the hour. Her immediate supervisor was Jennifer Koppa.

Nishna Productions, Inc. provides group living services to disable adults and adolescents in group home settings. Community living specialists assist with living skills, prepare foods, maintain cleanliness and otherwise supervise the individuals in the group home setting.

Ms. Reafleng was discharged based upon the employer's belief that the claimant was at times being gruff or acting rudely in dealing with residents and staff and being disrespectful to residents and staff. The employer also believed that Ms. Reafleng at times did her personal laundry while at work and that the claimant may have been spending time in a group living home's bathroom using it as a form of a "sauna." These allegations had been brought to the attention of the employer by an anonymous letter, the exact contents of which had not been shared with the claimant or with staff that provided day-to-day supervision over Ms. Reafleng. Based upon the anonymous allegations, Melissa Bonnes was assigned to investigate and

interviewed three staff members and three residents. The investigation showed that two of the three staff members questioned agreed that the claimant at times was “gruff” and one indicated vaguely that they believed that Ms. Reafleng may have done laundry at work. Another staff member indicated that she had seen no problems in Ms. Reafleng’s performance of her duties and work obligations. The clients agreed that the claimant at times had raised her voice and was “not nice.” A team leader had noted that the claimant had at times spent a long time in the bathroom and had subsequently found rolled up towel and a sweat suit. All parties agreed that Ms. Reafleng’s voice has a rough tone.

Because the claimant had received a previous warning about the way that she had made comments and documentation and because the claimant had been advised in evaluations to be more careful in her communication skills, the employer concluded that the claimant should be discharged from employment.

Ms. Reafleng was not informed for the contents of the anonymous letter and was not interviewed about the matter until the discharge meeting that took place on November 15, 2012. Although Ms. Reafleng had worked under the direct supervision of Jennifer Koppa in a residential setting, Ms. Koppa had not issued any disciplinary actions or warnings to Ms. Reafleng about her job performance.

Ms. Reafleng denies intentionally treating residents or staff inappropriately, denies doing laundry on company time or using the employer’s facility as a “sauna.” It is the claimant’s position that she naturally has a rough tone to her voice and that because her job requires her to give directives to residents, the residents often conclude that she is in effect bossing them around. It is the claimant’s belief that the anonymous letter was offered by a disgruntled “floater” who had made complaints to Ms. Reafleng but never worked directly with her.

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

The question before the administrative law judge is whether the evidence in the record establishes intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge may not necessarily be serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial."

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

In support of its position the employer relies primarily on hearsay evidence. Although hearsay evidence is admissible in administrative proceedings, it cannot be accorded the same weight as sworn direct testimony providing that the sworn direct testimony is credible and not inherently improbable.

In this matter the testimony of the employer's witness reflects generalized statements that the claimant was "gruff" or "not nice." These states were apparently made by some clients and some employees, are generalized in nature and subject to various interpretations. In contrast the claimant testified with specificity citing numerous examples in evaluations reflecting good service and good rapport with clients and staff.

The question before the administrative law judge in this case is not whether the employer had a right to discharge Mr. Reafleng for these reasons but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate Ms. Reafleng may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that the evidence in the record is not sufficient to establish disqualifying misconduct on the part of this claimant. Unemployment insurance benefits are allowed providing the claimant meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated May 3, 2013, reference 01, is reversed. The claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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