

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**DONNA M GREEN**  
Claimant

**APPEAL NO. 19A-UI-07956-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BETTENDORF HEALTHCARE MGMT**  
Employer

**OC: 09/01/19**  
**Claimant: Appellant (2)**

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Iowa Code Section 96.5(2)(a) – Discharge

**STATEMENT OF THE CASE:**

Donna Green filed a timely appeal from the October 4, 2019, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Green was discharged on August 30, 2019 for violation of a known company rule. After due notice was issued, a hearing was held on October 31, 2019. Ms. Green participated and presented additional testimony through Bobbie Hepler, Shannon Carlson and Tina Green. Brandy Calvelage represented the employer and presented additional testimony through Rosemary "Helen" Schultz. The hearing in this matter was consolidated with the hearing in Appeal Number 19A-UI-07957-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant (DBRO).

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Donna Green was employed by Bettendorf Healthcare Management as the full-time Dietary Manager at Bettendorf Healthcare Center, a long-term nursing facility. Ms. Green began the employment in 2016 as Dietary Manager. The employer's corporate human resources personnel discharged Ms. Green from the employment effective August 30, 2019. Brandy Calvelage, Assistant Administrator, notified Ms. Green of the discharge decision.

Ms. Green's use of profanity during a management staff meeting at end of the workday on August 26, 2019 was the sole basis for the discharge. Profanity was commonplace in the management team meetings. Toward the end of the meeting, Ms. Green used profanity to express her frustration with a situation that had been unresolved for a couple months. A couple months earlier, Ms. Calvelage had authorized Ms. Green to place a particular resident on a "renal diet" to address the resident's high potassium level. Such authorization and diet change would ordinarily occur in the context of a physician's order authorizing the change in diet. The nursing staff was responsible for obtaining the physician's order and for following up with a written directive to Ms. Green. Ms. Green would then use the written directive to document her

dietary department's authorization to change the resident's diet. Ms. Green had repeatedly requested during prior staff meetings that Ms. Calvelage follow up on the matter of the missing physician's order and missing written directive. Ms. Calvelage had repeatedly brushed off the concern. Donna Green's spouse, Tina Green, L.P.N., is on the nursing staff at Bettendorf Healthcare Center. Tina Green had been part of the initial discussion about changing the resident's diet and was present for the August 26 meeting. During the August 26 meeting, Donna Green was frustrated that Ms. Calvelage had once again brushed aside her concern about the absence of a physician's order and written directive. Toward the end of the meeting, Donna Green stood up and told Ms. Calvelage that Ms. Calvelage made her "look like a fucking idiot." Donna Green then left the meeting room. Tina Green then commented to those still present that "this is a great way to handle this." Tina Green then stated the situation was "bullshit" and left the room. Other management team members present for the meeting empathized with Donna Green's frustration about the lack of communication and stayed behind to discuss with Ms. Calvelage and Rosemary "Helen" Schultz, Director of Nursing, the need for better communication between the nursing staff and other departments. Ms. Calvelage reported Ms. Green's utterance to the human resources personnel at the employer's corporate office.

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

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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. *Deever v. Hawkeye Window Cleaning, Inc.*, 447 N.W.2d 418 (Iowa Ct. App. 1989).

The evidence in the record establishes a discharge for no disqualifying reason. At the hearing, several witnesses, including Ms. Calvelage, testified that profanity, including the word used by Ms. Green, was part of the common parlance at the management team meetings. In that context, Ms. Green's utterance, expressed in frustration rather than as an attack on Ms. Calvelage's authority, cannot be deemed an intentional violation or misconduct in connection with the employment. Ms. Green is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The October 4, 2019, reference 01, decision is reversed. The claimant was discharged on August 30, 2019 or no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/scn