

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RHONDA M BETCKE

Claimant

APPEAL 19A-UI-06888-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HEALTH SERVICES – IOWA CORP

Employer

OC: 08/04/19

Claimant: Respondent (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Mercy Health Services (employer) appealed a representative's August 23, 2019 decision (reference 01) that concluded Rhonda Betcke (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 24, 2019. The claimant participated personally. The employer was represented by Rachelle McKinney, Agent and Hearing Representative, and participated by Beckie Wahlberg, Employee Relations Consultant, and Jon Starks, Director of Environmental Services.

The employer offered and Exhibit 1 was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 20, 2016, as a full-time environmental services technician. She signed for receipt of the employer's handbook on June 20, 2016.

On June 7, 2019, the employer talked to the claimant about professional behavior. On June 17, 2019, the employer talked to the claimant about a code of conduct violation. The employer did not warn the claimant of termination from employment.

The claimant's job duties required her to enter the laundry room. On June 28, 2019, a co-worker cried to the employer after the claimant entered the laundry room after her. The co-worker thought the claimant stared at her. Based on the two actions of the claimant, the co-worker felt threatened and scared. The employer suspended the claimant.

The employer investigated. Three employees agreed that the claimant entered the laundry room after the co-worker. One of the employees thought the claimant stared at the co-worker. The claimant admitted entering the laundry room. All of this occurred after the claimant's sister had been terminated on an unknown date in the past. The co-worker did not have a connection to the sister's separation.

On July 12, 2019, the employer terminated because the claimant's "actions were not supportive of a safe and positive work environment and were found to be retaliatory in nature".

The claimant filed for unemployment insurance benefits with an effective date of August 4, 2019. The employer participated personally at the fact finding interview on August 21, 2019, by Tony Van Dam and Beckie Wahlberg.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide any evidence of job-related misconduct. The unknown witnesses all agree with the claimant that she entered the laundry room. Entering the laundry room was part of the claimant's job duties. It was not misconduct to enter the laundry room.

Two unknown witnesses said the claimant stared at the co-worker. The claimant was the only person who testified at the hearing who was present at the laundry room when the event occurred. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose not to do so. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's August 23, 2019, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs