

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLAUDIA K LUNA

Claimant

APPEAL NO. 11A-UI-08886-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

URBANDALE HEALTH CARE CENTER LLC

Employer

OC: 06/05/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant, Claudia Luna, appealed an unemployment insurance decision dated June 29, 2011, reference 01, that concluded she was discharged for work-connected misconduct. In-person hearings were held on October 12 and October 21. The hearing was completed by telephone conference on November 18, 2011. The parties were properly notified about the hearings. Luna participated in the hearing with her representative, Felicia Bertin Rocha, attorney at law, and with the assistance of interpreters Anna Pottebaum and Ninfa Redmond. Luna had witnesses, Janette Hayner and Francisa Flores. Daphney Michael participated in the hearing on behalf of the employer with witnesses Katie Gould, Dawn Livingston, and Tammi Haak. Claimant Exhibits 1, 2, 3, 5, 6, 7, 8, 9, 11, 13, and 14 were admitted into evidence at the hearing.

ISSUE:

Was Claudia Luna discharged for work-connected misconduct?

FINDINGS OF FACT:

Claudia Luna worked full-time for the employer as a housekeeping and laundry worker from November 18, 2011, to June 6, 2011. She was informed that under the employer's work rules, employees were required to follow reasonable directions from their supervisor and were subject to termination if they failed to do so. She was issued a final warning on January 18, 2011, for falsely accusing her supervisor of screaming at her and for failing to follow an instruction of her supervisor on changing vacuum bags. She was warned that further violations could result in further discipline up to and including discharge.

At approximately 12:30 p.m. on June 4, 2011, Luna's supervisor requested that she vacuum the area behind the three sets of fire doors on the hall she had been assigned to clean. Luna responded that it was not her fault, that another housekeeper should have vacuumed that area. The supervisor told Luna that she was asking Luna to do the vacuuming. Luna replied that the supervisor should not have been talking to her about it, because it was the other worker's fault. Luna refused to do the vacuuming as her supervisor requested.

The administrator and human resources manager spoke to Luna by phone on June 6, 2011. During the conversation, Luna admitted that she had not done the vacuuming requested by her supervisor.

On June 7, 2011, administrator and human resources manager decided that Luna was discharged for insubordinate conduct toward her supervisor after having received a final warning for similar conduct in January 2011. Although Luna's primary language is not English, she understood her supervisor's request on June 4 and what she was asked about on June 6, 2011.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether Luna was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. At the hearing, Luna asserted that her supervisor had never asked her to vacuum behind the fire doors on June 4 and she was never questioned about vacuuming on June 6. Evidence from the employer witnesses contradicts this and is far more believable and consistent with the contemporaneous written documentation in the record.

Luna's insubordinate conduct after receiving a final warning was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated June 29, 2011, reference 01, is affirmed. Claudia Luna is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw