

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**YOLANDA Y ECHOLS-BAUGH**  
Claimant

**COTTAGE GROVE PLACE**  
Employer

**APPEAL 18A-UI-08013-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/01/18**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 19, 2018, (reference 01), unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for engaging in conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephonic hearing was held on August 17, 2018. The claimant, Yolanda Y. Echols-Baugh, participated. The employer, Cottage Grove Place, participated through Samantha Barnes, Human Resource Manager; David Dukes, Food and Beverage Director; and Hilary Bourne, Dining Manager. Employer's Exhibits 1 through 6 were received and admitted into the record over objection.

**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, most recently as a lead cook, from August 3, 2013, until July 5, 2018, when she was discharged. The final incident leading to claimant's discharge occurred on July 3, 2018. That day, claimant saw a CNA-in-training fix her ponytail with her hands before feeding a resident. Claimant instructed a dietary aide to go tell the CNA-in-training to wash her hands before feeding the resident. The CNA-in-training went down the hall to wash her hands instead of using one of the available sanitary stations in the dining room/kitchen area. After the CNA-in-training returned, she and claimant exchanged words. The CNA-in-training then went to find her partner, who was in a resident's room on one of the halls. When the CNA-in-training and her partner turned around, claimant was standing in the doorway of the room. The CNA-in-training and her partner walked out of the room and down the hall, and claimant followed them. Claimant commented to the CNA-in-training that it was her dining room so she, the CNA-in-training, needed to follow claimant's rules. The CNA-in-training then packed up her personal belongings and went down the hall to Barnes' office to quit her employment. Claimant yelled after her that she was never going to make it and would have a hard time in life. When the employer spoke to claimant about this incident, claimant indicated that the CNA-in-training had gotten an attitude and was in her face that day.

Claimant received a “final spoken” warning on September 29, 2017. That day, claimant had a minor altercation with the Director of Nursing about some dirty dishes that the Director of Nursing put on a table. Claimant was given this final warning at the end of the day, and claimant was rushing to get out the door and did not receive a copy of the warning. Claimant had been written up in the past for refusing to remake food orders. On one occasion in January 2014, claimant was written up for calling another staff-member names. According to the employer, claimant had some indicating that she needed to improve her attitude at work. The employer maintains a compliance policy that prohibits harassment and requires a non-violent work environment.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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).

In an at-will employment environment 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, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

In this case, claimant was discharged after an altercation with a new employee. Even assuming the events occurred on July 3 exactly as the employer testified, claimant's actions that day do not amount to threatening or hostile conduct. While claimant may have been rude or unwelcoming to the new employee, she was not behaving in an egregious manner. Additionally, it does not appear that the employer actually issued claimant a final warning sufficient to put her on notice that improvement was required to maintain her employment. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Therefore, benefits are allowed.

**DECISION:**

The July 19, 2018, (reference 01), unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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