

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTHA M JIMERSON
Claimant

APPEAL NO: 07A-UI-03608-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AREA SUBSTANCE ABUSE COUNCIL INC
Employer

**OC: 03/11/07 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Martha M. Jimerson (employer) appealed a representative's March 29, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Area Substance Abuse Council, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 24, 2007. The claimant participated in the hearing and presented testimony from one other witness, Wanda Charles. John Garringer appeared on the employer's behalf and presented testimony from one other witness, Linda Touro. During the hearing, Employer's Exhibits One through Three were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 1, 1998. She worked full time as a cook at the employer's residential treatment facility. Her last day of work was February 28, 2007. The employer discharged her on that date. The stated reason for the discharge was having an angry outburst at a coworker after prior warnings regarding her temper.

The claimant had been warned regarding her emotional outbursts for several years, such as being placed on disciplinary probation on January 23, 2003. Anger management training was recommended and would have been paid for by the employer, but the claimant declined because her time in attendance would not have been compensated. Most recently she was given a written warning on December 4, 2006 which addressed concerns including the claimant becoming loud and angry.

On or about February 22, 2007 the employer received a report that the claimant was spreading gossip regarding a coworker. On February 23 Ms. Touro, the director of patient support services and operations, presented the claimant with the report, which the claimant denied.

During this discussion, the claimant learned that another coworker, Pat, had confirmed the claimant's alleged statements to Ms. Touro. Shortly thereafter, the claimant and Ms. Touro entered the kitchen where Pat was working. The claimant was angry and upset and began yelling at Pat, calling her a liar or saying, "why are you lying on me?" Pat was taken aback, literally taking steps back away from the claimant. After removing the claimant from the area, Ms. Touro determined that the claimant was too upset to continue working that day and sent her home. When the claimant returned for work on February 28, she admitted that she had lost her temper with Pat. As a result of this final incident the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer’s interest, or
 2. The employee’s duties and obligations to the employer.

The claimant's angry outburst after prior warnings about her emotional eruptions shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative’s March 29, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 28, 2007. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs