

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA K JENKINS
Claimant

APPEAL NO. 10A-UI-14102-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

AFFORDABLE HOUSING NETWORK, INC
Employer

**OC: 08/15/10
Claimant: Appellant (1)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 8, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 29, 2010. The claimant participated. The employer participated by Karen Bruess, vice president human resources, and Scott Krchik, accountant. The record consists of the testimony of Karen Bruess; the testimony of Scott Krchik; the testimony of Angela Jenkins; and Employer's Exhibits 2 through 4. Exhibit 1 was not admitted into evidence, as the claimant did not have an opportunity to see this exhibit.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a non-profit agency that provides low income housing in Cedar Rapids, Iowa. The claimant was hired on November 16, 2009, to provide cleaning services. She was a full-time employee. Her last day of work was August 17, 2010. She was terminated on August 17, 2010.

The incident that led to the claimant's termination occurred on August 13, 2010. The claimant's daughter, who attended the community center, overheard some employees talking about her mother. The daughter told the claimant and the claimant got upset. The claimant decided to confront one of the employees about the comments. The claimant went up to this employee and used an elevated voice and profanity. This confrontation was witnessed by Scott Krchik, who was present and was handing out checks to contractors. Mr. Krchik saw the claimant "in the other employee's space." Mr. Krchik told the claimant "enough" and asked her to leave, which she did.

Mr. Krchik reported the incident to Karen Bruess, vice president for human resources. Ms. Bruess conducted an investigation. The employer concluded that the claimant's conduct violated the employer's code of conduct by her use of disrespectful language and gestures towards another employee. The agency handbook prohibited this conduct and further stated that termination could result.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Profanity or other offensive language in a confrontational or disrespectful context may constitute misconduct, even in isolated situations or in situations in which the target of the statements is not present to hear them. See Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990). In Henecke v. IDJS, 533 N.W.2d 573 (Iowa App. 1995), the Iowa Court of Appeals stated that an employer has the right to expect decency and civility from its workers. The employer has the burden of proof to show misconduct.

The claimant admitted that she confronted this other employee after her daughter reported what she had overheard. She admitted that she used profanity and raised her voice. Her explanation for her conduct was that she was upset and had had a lot of things going on that particular week. The claimant realized afterwards that what she had done was not appropriate.

The administrative law judge concludes that the claimant's actions are disqualifying misconduct. The claimant was not reacting to something that was said directly to her by the other employee. She was reacting to something her daughter had overheard. This means that however angry or upset she might have felt, a period of time passed between when her daughter told her about the comments and her decision to confront another employee. The claimant's actions were deliberate and cannot be attributed to poor judgment on her part. The use of profanity in particular towards another employee is a breach both of the employer's code of conduct and the duty of civility owed by every employee to her fellow employees. Benefits are denied.

DECISION:

The representative's decision dated November 29, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw