

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALICIA AGUILAR
Claimant

APPEAL NO: 14A-UI-01856-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER
Employer

OC: 01/26/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 14, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 3, 2014. The claimant participated in the hearing. Julie Kilgore, Vice-President of Human Resources; Connie Rainey, Director of Customer Relations; and Adam Maus, Director of Environmental Services participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time linen technician for Broadlawns Medical Center from July 28, 1999 to January 27, 2014. She was discharged after a confrontation with a co-worker.

On January 27, 2014, employee Barney Sakkie went into the linen room and could see Linen Technician Lucy Howard. He could hear, but not see, the claimant who also could not see him from where he was standing. Mr. Sakkie observed the claimant yell at Ms. Howard, calling her a “whore” several times. The claimant also stated the employer needed to “stop hiring all of these black faces” and yelled at Ms. Howard that she should “go back to her own country.” Then Mr. Sakkie saw the claimant start to move toward Ms. Howard with her arm up in a pose that made him think she was going to strike Ms. Howard at which time Ms. Howard ran towards Mr. Sakkie and hid behind him saying, “Please help me.” It was at that point, in Mr. Sakkie’s judgment, the claimant realized he was there.

The employer interviewed Mr. Sakkie and then spoke to Ms. Howard, who stated the claimant had been harassing her since early that morning because she was upset about the way the linens were left. The claimant complained about that and repeatedly called Ms. Howard a “whore” in addition to stating the employer needed to stop hiring “all these black faces” and

telling Ms. Howard she should “go back to (her) own country.” The employer noted Ms. Howard is quite small and petite in stature and she indicated she was afraid of the claimant.

The employer then met with the claimant and reviewed the situation. The employer asked the claimant what happened and she said there was yelling and Ms. Howard called her a “whore” one time. When the employer asked the claimant to respond to the reports it received about the claimant moving toward Ms. Howard the claimant stated she was “just going to confront her about calling me a whore” when Mr. Sakkie saw her.

The employer reviewed a similar situation that occurred May 9, 2013, with the claimant when she received a written warning for using profanity and her performance evaluation of November 13, 2013, which stated she used poor judgment when handling situations with co-workers and received a below standards rating in that category.

After considering the incident, the employer terminated the claimant’s employment January 27, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

The claimant was witnessed by a third party calling Ms. Howard a “whore” and raising her arm in an offensive posture which appeared to the witness and Ms. Howard to indicate she was going to strike Ms. Howard. Ms. Howard ran and hid behind the male witness in an attempt to distance herself from the claimant. The claimant’s actions constitute assault because she put Ms. Howard in fear of a physical attack.

While the claimant testified Ms. Howard called said, “Fuck you” to her and called her a “fucking bitch,” the claimant did not make those allegations during the employer’s investigation of the incident and the witness did not hear Ms. Howard make any statements of that nature. Overall, the claimant’s credibility did not match that of the employer’s witnesses.

Under these circumstances, the administrative law judge concludes the claimant’s conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer’s interests and the employee’s duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The February 14, 2014, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css