

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA A AUDAS
Claimant

APPEAL NO. 10A-UI-11122-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BAXTER CARE LLC
Employer

OC: 06/20/10
Claimant: Appellant (1)

Section 96.5-2-A – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 5, 2010, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 21, 2010. Claimant participated. Desiree Brandt was a witness for the claimant. Employer participated by Patrick Quigley, administrator, and Lynn Cottrell, Dietary Manager. The record consists of the testimony of Patrick Quigley; the testimony of Lynn Cottrell; the testimony of Jessica Audas; and the testimony of Desiree Brandt.

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 long-term care facility located in Baxter, Iowa. The claimant was hired on April 23, 2009, as a dietary cook. The claimant was terminated on June 23, 2010.

The circumstances that led to the claimant's termination began on June 21, 2010. The claimant was given a written disciplinary action for work performance. In particular, the claimant was told that as the responsible dietary cook she was to make sure the kitchen was clean; check the freezer and refrigerator temperatures; and follow up on the dietary aides. The claimant refused to sign the form. On June 22, 2010, she sent her supervisor, Lynn Cottrell, a text message, which said: "this is bullshit and I'm not doing this." The employer considered the text message to contain foul language and to be insubordination. The claimant was terminated for this text message.

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. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). 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 evidence in this case is uncontroverted that the claimant sent her supervisor a text message where she used a vulgar phrase and clearly indicated that she was not going to do what her supervisor asked her to do on June 21, 2010. The claimant was upset because she did not feel that she should be responsible for messes in the kitchen that were made by other employees and she did not want to supervise the dietary aides. The employer had made reasonable requests that were within the job duties assigned to the claimant. The claimant did not want to do those duties and made that clear to the employer in the text message that she sent. The employer has shown insubordination and established misconduct. Benefits are denied.

DECISION:

The decision of the representative dated August 5, 2010, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css