

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LEAKEYS MCCLURKIN**

Claimant

**APPEAL NO. 11A-UI-08011-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC**

Employer

**OC: 05-15-11**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 15, 2011, 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 July 13, 2011. The claimant participated in the hearing with witness/former Winegard employee Tania McClendon and witness/current Winegard employee Ashley Myers. Sarah Fiedler, claims administrator, 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 general laborer for Team Staffing Solutions last assigned to Winegard from June 15, 2010 to May 19, 2011. She was removed from the assignment at the request of the client because of her attitude and altercations in the workplace. On February 9, 2011, she received a verbal warning because her group leader reported the claimant was insubordinate and disrespectful and was causing a disturbance on the line. On May 13, 2011, the claimant approached the employer's on-site supervisor when she went to get her check and stated the group leader would probably be contacting her because she had an altercation with one of the client's employees. She told the other employee that her method of doing a task was "retarded, but whatever." She told the on-site supervisor the employee later angrily confronted her about her "retarded" comment and the claimant "blacked out and went off on her because no one disrespects me and gets in my face like that." The supervisor reported the claimant "lunged at" the other employee and the group leader had to step between them and yelled at the claimant several times to go to the office before she complied. The employer told her that was inappropriate conflict resolution and that type of behavior would not be tolerated. The claimant indicated she understood.

On May 18, 2011, the client's supervisor asked the employer's on-site supervisor to question the claimant about her attitude, as she was throwing parts on the floor. The claimant told the

supervisor she was doing so because the parts were bad and when the supervisor told her to place them in the bin and moved it closer to the claimant the claimant said, "Whatever," and pulled the bin away from the supervisor angrily and with force. The claimant told the supervisor she was very calm during the incident and asked the supervisor where she would like her to put the parts, but the supervisor did not answer even though the claimant asked her several times but felt like the supervisor had an "attitude toward (the claimant) and was purposefully antagonizing (her)." The claimant then said she wanted to be placed with Lance, another of the employer's client's, and was told the employer would look into it but could not guarantee immediate results and the claimant stated she wanted to stay until the employer could find her another assignment. She was told to return to her assignment without further incident and the claimant said she would but was "visibly angry" about her supervisor "lying on her." She went back to her line but her supervisor reported when she did so, she was disruptive and yelling to another employee about how she was just counseled and "it was bullshit." She then said she was going to work at Lance before saying, "Fuck this place." The supervisor also heard her say the supervisor and group leaders were "bitches" and she was "sick of getting lied on." The client sent her home for the day and asked the employer to end her assignment. The employer called the claimant and told her that her assignment was over, but the claimant came in the May 19, 2011, anyway and was sent away. The employer called her again later that day and told her not to return.

#### **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 warned about her attitude and behavior, but both persisted despite the warnings. The claimant's actions May 18, 2011, were inappropriate, unprofessional, and not something the employer could tolerate at a client's business. Consequently, 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). Benefits are denied.

**DECISION:**

The June 15, 2011, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw