

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LESLIE A COYLE

Claimant

APPEAL NO: 19A-UI-07088-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLEMONS INC OF OTTUMWA

Employer

OC: 08/04/19

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 30, 2019, 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 September 30, 2019. The claimant participated in the hearing. Jennifer Corado, Assistant Office Manager, 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 cashier/receptionist for Clemons Inc. of Ottumwa from March 28, 2019 to August 7, 2019. She was discharged because she could not get along with a co-worker.

A new employee, Hannah, started as a title clerk and the claimant did not like her. At the end of July 2019 the claimant was reading numbers off a ticket to Assistant Office Manager Jennifer Corado but the numbers were incorrect and Ms. Corado could not find that number on the system. The claimant started walking the box with the ticket over to Ms. Corado and Hannah said, "Here, let me look." The claimant jerked the box away from her and said, "Don't tell me how to do my job. I've been here longer than you." When Ms. Corado looked at the number and found the claimant's error the claimant became agitated and "volatile." She became even more derogatory toward Hannah calling her "lazy, stupid, a stupid c**t and a stupid b***h."

On August 5, 2019, CFO Sherry Gouge called the claimant and Hannah into her office and verbally warned them about their behavior and told them they needed to drop their animosity at the door. After the meeting Ms. Gouge went to lunch and the claimant was slamming doors in the file room and making comments about Hannah under her breath but loud enough that Ms. Corado heard them. She said Hannah was lazy and stupid and, with a customer at the parts counter, said Hannah was a "lazy f**cking c**t" and a "lazy f**cking b***h." The customer walked over to see what was going on and Ms. Corado went to tell the claimant to stop. The

claimant said she was frustrated because Hannah was lazy and Ms. Corado again told her to stop.

On August 6, 2019, the claimant became upset with Hannah because Hannah moved the pink stapler they typically used at the counter from the claimant's temporary desk. The claimant took the stapler from the counter and slammed it on her desk and then directed her hostility and verbal attacks at Hannah calling her a "stupid f**king b***h" and a "dumb c**t." The claimant went to the filing room and slammed doors and accused others of "messing up her files" and yelling that she "knew (her) alphabet" and someone was doing it on purpose. Ms. Corado told her she needed to tone it down because there were customers present and the claimant said, "I just hate that stupid b***h."

On August 7, 2019, Hannah had again moved the stapler to the front counter and the claimant grabbed it and slammed it on her desk, breaking it into pieces. She then went to the file room and yelled verbal attacks against Hannah. After Ms. Gouge returned from lunch Hannah went to talk to her. Ms. Gouge then called Ms. Corado in before having the claimant come into her office as well. Ms. Gouge told the claimant it had come to her attention that she was still "carrying on" and had called Hannah a "c**t." The claimant said, "Yes, because I don't like her telling me what to do." Ms. Gouge said that technically Hannah was above the claimant in the organizational tree and the claimant became infuriated and said, "I quit." Ms. Gouge said okay and the claimant explained why and then Ms. Gouge said the claimant would need to have a respectful relationship with Hannah between 8 and 5. The claimant said, "So you want me to quit" and Ms. Gouge said she did not say that but it had to be that way or the claimant would be making the decision herself. The claimant left the room and went back to her desk and made comments under her breath about Hannah. A short time later Ms. Gouge met with Ms. Corado and said she was going to discharge the claimant. At 5:15 p.m. Ms. Gouge met with the claimant and terminated her employment.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant was told and warned to stop her offending conduct but despite those strong verbal warnings she insisted on calling Hannah vile and disgusting names. The language the claimant directed at Hannah in anger has no place in any workplace and the claimant knew or should have known that the employer would not tolerate her behavior toward Hannah, regardless of why she was upset with her.

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 August 30, 2019, 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/scn