

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JANE M CURL**  
Claimant

**IOWA HOME CARE LLC**  
Employer

**APPEAL 14A-UI-06599-L**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/25/14**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 16, 2014, (reference 01) decision that denied benefits because of a discharge from employment. After due notice was issued, a hearing was held on August 5, 2014, in Des Moines, Iowa. Claimant participated and was represented by Thomas Hurd, Attorney at Law. Employer participated through human resource manager Shelley Hill, health and wellness director Denny Kigin and director of nursing Katie Foltz. Claimant's Exhibits A, B1, B2, B3, C, D1 – D9 were received. The administrative law judge took official notice of the administrative record, including fact-finding documents.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time home health aide from August 6, 2012, through May 30, 2014. On that date claimant went to the office to pick up her paycheck from pediatric program director Jen Degner. Degner did not participate because she was working on a case. Degner pulled her check with two notes attached alerting claimant to report to human resources and document control. The payday procedure is to have employees who need to complete paperwork, whether personal or for clients, take care of that time-sensitive billing or payroll business before leaving with their paychecks. Degner advised claimant of the notes and asked her to take care of those before she picked up her paycheck. Claimant argued with Degner in a raised voice telling her, "You can't hold my paycheck, it's illegal." (Employer's Exhibit 1) Claimant denied "yelling." Foltz heard raised voices from ten feet away in her office with the door closed and Kigin was in counseling sessions and heard claimant's loud voice and argument specifically about not going to document control. Claimant's paycheck was lying on the table with the notes so claimant took them, went to the offices and returned with the initialed notes and told Degner, "See, I told you I would be back." Degner reminded her of the long-standing procedure to flag, not hold, checks and that it was "rude" for her to argue and behave unprofessionally in front of other staff. Claimant walked out the first set of doors and returned to clarify what Degner meant

by “rude.” She approached Degner within a foot and whispered that she was trying to make a point that she could be trusted. Gloria from document control was about three feet away.

Kigin had warned her in writing on September 3, 2013, about rude conduct and unprofessional behavior when she reported to pick up a company vehicle for use with a client. Starlena Lovejoy, who is no longer an employee, reported the incident. Claimant was upset that her phone call was not answered when she walked in and found Lovejoy talking with someone else. She was abrupt and demanding, snapping her fingers in urgency, using a raised voice with Lovejoy. Later in the day when Kigin met with claimant, she used a sharp tone towards her as well. Claimant denied using a sharp tone. (Claimant’s Exhibit C) She had been warned in writing on August 23, 2013, after manager Cindy Robinson reported two calls on August 22 from clients requesting claimant not to return to their homes. Claimant called one client a “grumpy old lady.” She had also been requested not to return to three other clients over past months. On August 14, claimant was counseled after being in the office complaining about having worked only two of eight hours because of client cancellations but refused other visit offers with sharp tones as reported by supervisor Cindy Robinson and bystander DON Trish Brewer. Claimant called the allegation a “lie” and denied using sharp tones but was tired. Claimant has had satisfactory evaluations (Claimant’s Exhibit B) and client compliments. (Claimant’s Exhibit D)

#### **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 § 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.

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).

This decision turns on the credibility of the parties. While the employer's allegations include unprofessional and rude conduct with clients, supervisors and coworkers, it has not provided sufficient detail regarding client complaints to establish misconduct on that basis. However, given that there were multiple source complaints from coworkers and supervisors about her sharp and argumentative tones, abrupt and demanding finger-snapping behavior, and verbal aggression or confrontation, the employer's evidence of repeated unprofessional behavior towards co-employees is credible. The employer has presented substantial and credible evidence that claimant was rude and unprofessional with coworkers and supervisors after having been warned. This is evidence of deliberate conduct in violation of company policy, procedure, and/or prior warning. Benefits are denied.

**DECISION:**

The June 16, 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.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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