

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRY L GOOD

Claimant

APPEAL NO. 09A-UI-09493-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLEN MEMORIAL HOSPITAL

Employer

**Original Claim: 05/10/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Allen Memorial Hospital filed a timely appeal from a representative's decision dated June 29, 2009, reference 02, which found the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was scheduled for and held on July 20, 2009. The claimant participated personally. Participating as a witness for the claimant was Mr. Tom Moritz, union representative. The employer participated by Mr. Ken Libold, human resource manager; Ms. Tina White, assistant manager housekeeping, and Ms. Mary Dvorak, manager housekeeping.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds: The claimant was employed by Allen Memorial Hospital from March 24, 2008, until May 28, 2009, when she was discharged from employment. Ms. Good held the position of full-time housekeeper and was paid by the hour. Her immediate supervisor was Tina White.

Based upon a reported verbal dispute between the claimant and her supervisor, Ms. White, the hospital was investigating to determine whether Ms. Good should be warned and suspended. It was alleged that the claimant had used the "f word" in the exchange with her supervisor. Based upon the information available to the hospital, Ms. Good was suspended for one day.

While investigating the circumstances leading to the claimant's one-day suspension, another employee alleged that the claimant had made the statement "I hate that bitch" in reference to her supervisor, Ms. White. The claimant was suspended for an additional seven days while the hospital further investigated.

Because the employer believed that they had sufficient grounds to initially suspend the claimant for the alleged use of the “f word,” the employer found the allegation that Ms. Good had referred to her supervisor as a “bitch” as credible and a decision was made to terminate Ms. Good from employment.

Upon the claimant’s return from suspension, a discharge meeting was held and the claimant was discharged without being provided the opportunity to explain or deny the allegation.

Ms. Good has at all times denied the allegation that she had referred to her supervisor in a vile or derogatory manner. The claimant also denies using the “f word” during the previous exchange with her supervisor. It is the claimant’s position that she stated, “Why do you keep trying to screw me?” in response to a decision the supervisor had made that the claimant disagreed with.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to establish that the claimant was discharged for misconduct warranting a denial of unemployment benefits. It does not.

In this case, the claimant was discharged based upon an allegation that was made by a hospital employee that Ms. Good had referred to her immediate supervisor as a “bitch.” The employer considered the allegation to be sufficient to warrant the discharge of Ms. Good because the claimant was being suspended for one day for using inappropriate language during a verbal dispute with her supervisor. The claimant, in her sworn testimony, denied referring to her supervisor as a “bitch” or in any other derogatory manner. The claimant further testified that during the previous incident, she did not use the “f word” but had stated, “Why do you keep trying to screw me?” in reference to a decision Ms. White had made that the claimant disagreed with.

The question before the administrative law judge is whether the evidence in the record is sufficient to establish misconduct. It is not. The employer has chosen to rely on hearsay evidence in support of its position. While hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony. The administrative law judge finds the claimant to be a credible witness and finds that her testimony is not inherently improbable. Based upon the claimant’s firsthand sworn denial and there being an absence of equal weight to the contrary, the administrative law judge must conclude that the employer has not sustained its burden of proof by a preponderance of the evidence in this matter.

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.

While the decision to terminate Ms. Good may have been a sound decision from a management viewpoint, for the above-stated reasons disqualifying misconduct has not been established. Benefits are allowed.

DECISION:

The representative's decision dated June 29, 2009, reference 02, is affirmed. The claimant was dismissed under non-disqualifying conditions. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw