

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JO ANN K HORZUESKY-PISKA
Claimant

OPPORTUNITY VILLAGE
Employer

APPEAL 17A-UI-11254-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/01/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 27, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for insubordination. The parties were properly notified of the hearing. A telephone hearing was held on November 22, 2017. The claimant, Jo Ann K. Horzuesky-Piska, participated. The employer, Opportunity Village, participated through Cindy LeFebre-Westendorf, Human Resources Manager; Michael Mahaffey, Chief Development Officer; Chris Cash, Team Leader; and Bev Stadlander, Team Leader.

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 full time, most recently as a job coach, from November 14, 2000, until September 29, 2017, when she was discharged. On September 28, 2017, claimant had a meeting with Mahaffey and Cash and was informed that she would not be receiving retro pay. The following day, claimant came into Stadlander's office with some questions about her meeting from the day before. Stadlander told claimant that they were not going to discuss it again and the issue had already been decided. Claimant then turned around to leave the office and said, "Well, they can just kiss my ass." Stadlander reported this to management. Claimant was called into Human Resources to meet with Mahaffey, Stadlander, Cash, and Westendorf. Mahaffey asked claimant if she made the comment as Stadlander reported, and claimant admitted that she did. Claimant was immediately discharged.

Claimant had been warned in the past for her poor attitude. On June 28, 2017, claimant was placed on a performance plan after a poor interaction at Wendy's. Someone from Wendy's contacted the employer and reported that claimant had a negative tone toward the restaurant employees and the individual claimant was present to job-coach. Additionally, claimant spoke unprofessionally about other employees and about her own employer. Wendy's asked that

claimant no longer come on-site to provide job coaching. Claimant was notified that she would be discharged if she did not improve her attitude and performance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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).

"The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context, may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made. The question of whether the use of improper language in the workplace is misconduct is nearly always a fact question. It must be considered with other relevant factors, including the context in which it is said, and the general work environment." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Vulgar language in front of customers can constitute misconduct, *Zeches v. Iowa Dep't of Job Serv.*, 333 N.W.2d 735,

736 (Iowa Ct. App. 1983), as well as vulgarities accompanied with a refusal to obey supervisors. *Warrell v. Iowa Dep't of Job Serv.*, 356 N.W.2d 587, 589 (Iowa Ct. App.1984).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's witnesses more credible than claimant's testimony. The administrative law judge believes that claimant made the comment Stadtlander reported, and the administrative law judge believes that claimant admitted it to management. Claimant had been warned about her attitude in the past, and this final incident certainly displays a continued poor attitude toward her employer. Here, claimant used offensive language in a disrespectful context toward management and in front of one of her supervisors. While nothing claimant said was exceedingly vulgar or threatening, using profanity in this defiant way amounts to disqualifying misconduct. Benefits are withheld.

DECISION:

The October 27, 2017 (reference 01) unemployment insurance decision is affirmed. 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn