

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHELLY L TODD
Claimant

GREAT RIVER MEDICAL CENTER
Employer

APPEAL 19A-UI-00557-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/09/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 9, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephonic hearing was held on February 26, 2019. The claimant, Shelly L. Todd, participated along with witness Kayla Watts. The employer, Great River Medical Center, participated through Laura Bailey, Human Resources Generalist; Brennan Patterson, RN Manager, and Bobbi Ahlen, Director. Employer's Exhibits 1, 2, and 3 were received and admitted into the record over objection. The administrative law judge took official notice of the administrative record.

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 an RN, from November 3, 2014, until December 10, 2018, when she was discharged. On November 28, 2018, claimant received a telephone call at work from her daughter. Claimant was not at her desk at the time, so another nurse took the message for claimant to return the call and put it on claimant's desk. When claimant returned to her desk, she called her daughter back. During this call, claimant became extremely upset over an urgent family matter. She was yelling and she used profanity, including the f-word. The nurse and team lead who witnessed this conversation compared it to a mother losing her temper with a child, and they felt afraid for their safety at the time. Other nurses who were near the area reported hearing yelling. One of these nurses assumed it was a patient who had become distraught, and she was surprised when she came out of the triage room and found it was claimant who was yelling.

After this telephone call, claimant told the team lead that she needed to leave work. The team lead reminded claimant that she needed to report this to the supervisor, and claimant replied that she had a conflict with the supervisor and asked the team lead to report the information to

her. Claimant then gave a report on her active patient to another nurse, she finished her charting, and she left work.

After learning about the incident, Patterson conducted an investigation. She interviewed all of the nurses who were working in the department that shift, including claimant. Patterson interviewed the nurses individually, one after the other without downtime, preventing them from having the opportunity to talk to one another between interviews. When Patterson interviewed claimant, she denied using profanity or yelling.

Claimant had a prior warning for using profanity in the workplace. On April 15, claimant yelled profanity at a police officer while at work. This incident involved a combination of workplace and family issues. Because of this incident, claimant received a final written warning and a suspension. Claimant was aware that her job was in jeopardy if she used profanity in the workplace again. She was explicitly told that she was never allowed to use expletives or be unprofessional at the desk again.

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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

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 version of events more credible than claimant's version of events. While the employer did not present any of the individuals who witnessed the incident, it did provide Patterson, the person who conducted the interviews and assessed credibility during the investigation. Patterson did not give the witnesses time to talk to one another before or after their interviews, so there was no opportunity to coordinate stories. Additionally, there is no credible reason in the record that would explain why claimant's co-workers would fabricate this story about her behavior.

"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).

In this case, claimant was discharged for using profanity and yelling while at work. Claimant had previously been warned that this conduct was not acceptable, and she had been told that another incident of profanity would lead to her discharge. The administrative law judge finds that the employer has established claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The January 9, 2019, (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