IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LINDA SHANAHAN-MUTERT
Claimant

RCHP – OTTUMWA INC
Employer

APPEAL NO. 17A-UI-01476-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/08/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

RCHP - Ottumwa (employer) appealed a representative's January 31, 2017, decision (reference 01) that concluded Linda Shanahan-Mutert (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 2, 2017. The claimant participated personally. The employer participated by Lidia Bryant, Director of Human Resources. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 27, 2015, as a full-time respiratory therapist. She received the employer's handbook at her orientation shortly after she was hired. The claimant was never absent or tardy and worked for co-workers when they were absent. The employer did not issue her any warnings during her employment.

A co-worker called the claimant "fucking stupid" repeatedly. Once, the co-worker put her hand close to the claimant's face while she called her names. The claimant always complained to her manager, the manager said she would take care of it, but the co-worker did not stop. On one shift the co-worker placed a tiny enfant on a respirator. The patient was in critical condition and the claimant was desperate for the co-worker to respond to her calls for assistance. The co-worker would not respond. The claimant complained.

The co-worker's friend also worked for the employer and was under investigation for misconduct. The friend told the manager that the claimant made threatening comments about the co-worker on December 28, 2016. On January 4, 2017, the employer questioned the claimant about the comments and the claimant denied having made them. On January 6, 2017,

the employer terminated the claimant. The co-worker and her friend continue to work for the employer.

The claimant filed for unemployment insurance benefits with an effective date of January 8, 2017. The employer did not participate in the fact-finding interview on January 30, 2017. The employer's representative did not notify the employer of the interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose not do so. The employer did not provide any first-hand testimony at the hearing and,

therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 31, 2017, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs