

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TINA M RAIMANN
Claimant

MOSAIC
Employer

APPEAL 16A-UI-04650-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/27/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 14, 2016 (reference 01) unemployment insurance decision that denied benefits based upon her discharge for using profane language on the job. The parties were properly notified of the hearing. A telephone hearing was held on May 3, 2016. The claimant, Tina Raimann, participated and testified. The employer, Mosaic, participated through hearing representative Alyce Smolsky, human resource generalist Doris Holmes, team lead Jamie Claude, and direct support coordinator Nikki McMurry. Employer's Exhibit One through Five and claimant's Exhibit A were received into evidence.

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 as a direct support manager from December 8, 2014 until this employment ended on March 14, 2016, when she was discharged.

As part of her normal job duties claimant works with individuals with intellectual and physical disabilities. On March 9, 2016, three separate reports were received regarding claimant's behavior towards a client earlier in the day. Specifically, the staff members working with claimant that day reported observing her swear at a client. (Exhibit 2). Due to the seriousness of the allegations, claimant was suspended pending an investigation. Holmes conducted an investigation into the allegations, which included interviewing the three employees working with claimant at the time of the incident and the client involved in the incident. All four individuals reported claimant using inappropriate language toward the client. Holmes then interviewed claimant. Claimant admitted she became frustrated with the client and used at least some inappropriate language. (Exhibit 3).

The employer has a policy in place which prohibits using profanity towards clients. (Exhibit 1). Claimant received a copy of this policy as part of the employee handbook. Holmes' investigation concluded that claimant had violated this policy and that, due to the seriousness of

the incident, her employment should be terminated. Claimant was notified of the decision to terminate her employment on March 14, 2016. Claimant testified that she was aware cursing at clients was unacceptable, but did not think it would lead to her termination, as other employees had engaged in the same behavior but were not terminated. Claimant also testified that she did not report this behavior to management even though she was responsible for doing so. Holmes denied ever receiving reports of other employees engaging in this type of behavior.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in

testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. An employer has a "right to expect decency and civility from its employees." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 738 (Iowa Ct. App. 1990). Profanity or other offensive language in a confrontational, name-calling, or disrespectful context may constitute misconduct, even in isolated situations or in situations in which the target of the statements is not present to hear them. See *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990), overruling *Budding v. Iowa Dep't of Job Serv.*, 337 N.W.2d 219 (Iowa Ct. App. 1983). "We have recognized that 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 the present case, claimant used profanity towards one of her clients. It is understandable that claimant was frustrated with the situation. However, frustration does not excuse claimant's behavior. Using profanity towards a client not only violates the employer's policies but also commonly held workplace standards. Claimant argues she was treated unfairly as compared to other employees who engaged in similar behavior. Holmes provided credible testimony that she was unaware of other employees who engaged in this behavior. Claimant testified that, while she observed this behavior, she did not report it to management, even though that is required as part of her job responsibilities. Claimant cannot benefit because she chose not to report other employees for violating the employer's policy. Claimant's conduct on March 9, 2016 is considered disqualifying misconduct, even without prior warning. Benefits are denied.

DECISION:

The April 14, 2016 (reference 01) unemployment insurance 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.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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