

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**HOLLY C STEVENSON**  
Claimant

**APPEAL NO: 20A-UI-10904-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIRST RESOURCES CORP**  
Employer

**OC: 03/22/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Holly Stevenson filed a timely appeal from the September 1, 2020, reference 02, decision that disqualified her for benefits and that relieved the employer's account of charges for benefits, based on the deputy's conclusion that Ms. Stevenson was discharged on June 22, 2020 for conduct not in the best interests of the employer. After due notice was issued, a hearing was held on October 23, 2020. Ms. Stevenson participated. Amanda Dunnick, Human Resources Administrator, represented the employer. Exhibits 1, 2, 3 and A through H were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Holly Stevenson was employed by First Resources Corporation as a full-time Direct Support Professional from March 2019 until June 23, 2020, when the employer discharged her from the employment. Ms. Stevenson work hours were midnight to 8:00 a.m., five days per week. Ms. Stevenson's duties involved ensuring the dependent adult clients at her assigned house were safe and accounted for during the overnight hours. Marquise Lewis, Habilitation Site Supervisor, was Ms. Stevenson's supervisor.

The conduct that triggered the discharge occurred on June 22, 2020 during and after a disciplinary meeting conducted by Mr. Lewis. Ms. Stevenson had worked the overnight shift before she reported for the meeting at the employer's administrative office at about 10:00 a.m. During the meeting, Mr. Lewis attempted to discuss with Ms. Stevenson a written reprimand he had prepared for the meeting. The written reprimand was based on Ms. Stevenson's absence from a scheduled shift on June 20, 2020. The employer was not planning to discharge Ms. Stevenson in connection with the attendance issue. Ms. Stevenson did not believe the reprimand was justified and thought the attendance issue arose from a miscommunication between Mr. Lewis and another manager. Ms. Stevenson became upset and belligerent during

the meeting. Ms. Stevenson yelled and directed profanity at Mr. Lewis. Ms. Stevenson initially declined to sign to acknowledge the reprimand, but at another point yelled at Mr. Lewis, "Give me the fucking papers." Mr. Lewis attempted to de-escalate the interaction. Ms. Stevenson's volume attracted the attention of Mr. Lewis's supervisor, Amanda Underwood, who briefly entered to see whether a break would help de-escalate the interaction. Ms. Stevenson continued to be belligerent and referenced her mental health issues, which include borderline personality and PTSD. Ms. Stevenson stormed out of the meeting. As she did that, she yelled that she wanted to be done with the company and that the managers were "fuckers." Ms. Stevenson's conduct violated the employer's conduct policy. The employer provided the policy to Ms. Stevenson at the start of her employment. After Ms. Stevenson left she called to apologize for her behavior. Mr. Lewis, Ms. Underwood and another administrative staff member promptly documented what had just occurred. That same day, the employer made the decision to terminate the employment. On June 23, 2020, the employer notified Ms. Stevenson by telephone that she was discharged from the employment.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

An employer has the right to expect decency and civility from its employees and an employee’s use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior’s authority. *Deever v. Hawkeye Window Cleaning, Inc.*, 447 N.W.2d 418 (Iowa Ct. App. 1989).

The evidence in the record establishes a discharge based on misconduct in connection with the employment. The evidence indicates that the attendance concern may have precipitated the June 22 incident, but was not the basis for the discharge. The weight of the evidence establishes that Ms. Stevenson escalated the interaction between herself and Mr. Lewis on June 22, when she became belligerent during the meeting and continued to be belligerent despite the employer’s repeated attempts to de-escalate the interaction. The weight of the evidence fails to support Ms. Stevenson’s assertion that Mr. Lewis directed profanity at her, but clearly indicates that Ms. Stevenson directed profanity at Mr. Lewis and the other managers within earshot at the time she stormed out. Regardless of Ms. Stevenson’s mental health issues, her conduct during and immediately after the meeting was unacceptable, violated the employer’s work rules, and demonstrated a willful and wanton disregard of the employer’s interests in maintaining a safe, civil work environment. The weight of the evidence establishes that Ms. Stevenson intentionally directed vulgar utterances at Mr. Lewis and at other managers as an attack on their supervisory authority. Ms. Stevenson is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Stevenson must meet all other eligibility requirements. The employer’s account shall not be charged for benefits.

**DECISION:**

The September 1, 2020, reference 02, decision is affirmed. The claimant was discharged on June 22, 2020 for misconduct in connection with the employment. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



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James E. Timberland  
Administrative Law Judge

October 27, 2020  
Decision Dated and Mailed

jet/scn

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**