

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERESA L DINGMAN**  
Claimant

**APPEAL NO. 09A-UI-09231-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RESCARE INC**  
Employer

**OC: 08/24/08**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the representative's decision dated June 16, 2009, reference 04, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 16, 2009. The claimant participated personally. The employer participated by Jodie Marlette. The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits.

**ISSUE:**

The issue is whether the claimant was discharged from employment for disqualifying misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds: The claimant was employed as a full-time outreach worker for Rescare, Inc. from September 9, 2008 until May 19, 2009 when she was discharged from employment.

The claimant was discharged when the employer perceived that Ms. Dingman had been disrespectful in making a comment to Ms. Marlette after being informed of a reduction in hours and cell phone time available to the claimant.

Due to issues in job completion and safety, a decision had been made to hire Ms. Dingman, a "partner" to assist in the organization's flood outreach activities. When publicly informed of the changes Ms. Dingman responded, "Well you are just being a devil today aren't you?" The employer felt that the claimant's statement was indicative of a negative attitude and discharged the claimant.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 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.

871 IAC 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.

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). The issue is not whether the employer made a correct decision separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants a denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant a discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial."

The evidence in this case establishes that the claimant was discharged based upon the employer's perception that she had been insubordinate in making a comment in reaction to being informed of changes in her employment. An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if the employer fails to meet its burden of proof to establish intentional job-related misconduct as the reason for separation, the employer incurs potential liability for unemployment insurance benefits related to

that separation. Misconduct was merely an isolated instance of poor judgment. Inasmuch as the employer had not previously warned the claimant about issues leading up to the separation, the employer has not met its burden of proof to establish that the claimant acted deliberately or that the claimant's conduct was of such a nature that the claimant knew or should have known that immediate discharge would result. Benefits are allowed.

**DECISION:**

The representative's decision dated June 16, 2009, reference 04, is affirmed. The claimant was dismissed for no disqualifying reasons. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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