

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY JAMIESON
Claimant

APPEAL NO. 13A-UI-08317-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA PHYSICIANS CLINIC MEDICAL
Employer

**OC: 06/23/13
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 12, 2013, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on August 20, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Matt Reilly, Attorney at Law. Linsey Haddeman participated in the hearing on behalf of the employer with a witness, Allison Rigdon.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant was employed full time for the employer as a clinical nurse from January 7, 2000, to June 24, 2013. The clinic administrator is Linsey Haddeman and the clinic lead was Allison Rigdon. She was in the process of transferring to another position with the employer.

The claimant was scheduled to work on June 24, 2013. On June 22, Rigdon sent the claimant a text message stating that she was not to tell Haddeman, but Rigdon wanted to give the claimant a heads up that Haddeman would be meeting with the claimant on June 24 to change in her hours to include weekend work. The claimant replied that was okay because she would be transferring to another job soon.

On Sunday June 23, Rigdon was working when she received multiple text messages from the claimant. The claimant asked whether Rigdon was just going to sit back and let Haddeman put her on weekends. She accused Rigdon of betraying her, stepping on people to get what she wanted, stooping lower than Haddeman, and acting like a two-year old. At first, Rigdon responded asking what the claimant meant, but when the texts continued, Rigdon stopped responding.

The claimant then began calling Rigdon's phone to let Rigdon know that she would not be at work on June 24. Rigdon was not available to take the call so the claimant called Haddeman. She asked Haddeman who was the on-call supervisor because she was not going to be at work

on June 24. Haddeman told the claimant that Rigdon was on call and Haddeman would take care of her shift.

The claimant tried calling Rigdon again and when she did not answer, she sent a text message, "Aren't you on call? Why can't you answer your fkg phone?" She also texted that she was going to involve Haddeman and other managers. She also called the clinic asking for Rigdon but Rigdon asked that the claimant be told that she was busy. Rigdon then called Haddeman and told her what had happened and found out the claimant was not going to be at work on June 24 and her shift was covered.

When she could not reach Rigdon by phone, the claimant called Haddeman again. Haddeman told the claimant that she knew about the conversations between the claimant and Rigdon and that she had another job. She asked the claimant why she was not coming in. When the claimant said she was not feeling well, Haddeman told her that she could not allow that and she needed to be at work. The claimant believed Haddeman was going to block her transfer, so she told Haddeman that she was being a bitch more than once. The conversation ended with Haddeman telling the claimant that her shift was covered.

The claimant again tried calling Rigdon. Initially, Rigdon did not answer but ultimately she took the call to put a stop to things. She told the claimant that they were finished talking. The claimant responded that Rigdon needed to stop being such a bitch.

The employer discharged the claimant on June 24, 2013, for insubordination based on her conduct toward Rigdon and Haddeman on June 23.

It was not uncommon for profanity to be used by employees in speaking to each other in workplace, including by Rigdon and Haddeman. The claimant had not been warned about insubordination before.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof.

In *Myers v Employment Appeal Board*, 462 N.W.2d 736 (Iowa Ct. App. 1990), the court considered whether an isolated instance of profanity used in the workplace could constitute work-connected misconduct. While the court ruled that such language could constitute disqualifying misconduct, the court cautioned that the language used must be considered with

other relevant factors, including the context in which it was said and the general work environment. The court emphasized that an employer has the right to expect decency and civility from its employees and the use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct. Id. at 738.

Under the circumstances here, the claimant's language toward Rigdon and Haddeman would constitute a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. The fact that the claimant abbreviated a profanity in a text message does not mitigate what she said. Telling someone that they are acting like a bitch is no different than calling someone a bitch. The fact that profanity was sometimes used in the workplace needs to be considered, but in this case, I conclude the profanity was in a confrontational, disrespectful, and name-calling context.

DECISION:

The unemployment insurance decision dated July 12, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css