

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAREN L WESTERN**  
Claimant

**APPEAL NO. 12A-UI-03620-H**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PINNACLE HEALTH FACILITIES XVII**  
Employer

**OC: 02/26/12**  
**Claimant: Appellant (2)**

Section 96.5(2)a - Discharge

**STATEMENT OF THE CASE:**

The claimant, Karen Western, filed an appeal from a decision dated March 29, 2012, reference 01. The decision disqualified her from receiving unemployment insurance benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on May 1, 2012. The claimant participated on her own behalf. The employer, Pinnacle Health Facilities, was paged in the main waiting area at 10:01 a.m. and again at 10:16 a.m. No one was present and the employer did not participate.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct serious enough to warrant a denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Karen Western was employed by Pinnacle Health Facilities from February 2008 until February 27, 2012. She was a full-time medication aide working 6:00 a.m. until 2:00 p.m.

On Tuesday, February 21, 2012, the claimant became involved in a situation with another employee. Dora, a certified nursing assistant, was in a resident's room along with the claimant and another employee, Demita. Ms. Western asked Dora why Dora had told Demita that the claimant had been talking about Demita and her mother. Dora denied it and then became very loud shouting, "Get out, get out" and denied that she had said anything. Eventually, DON Mary Heinz, heard voices and went down to the room. She told them all to go on about their business and the claimant did. As she was leaving Dora called her a bitch.

Sometime later while the claimant was passing meds, Dora again confronted her and began raising her voice and shouting at her. Ms. Western told her to go away but then Ms. Heinz told them both to go home. Ms. Western returned to work the next day and was told by the supervisor that Ms. Heinz had said they were suspended until further notice.

On February 23, the claimant called Ms. Heinz to ask when she could return to work and was told that the matter had been forwarded to the corporate office and it would decide what the next step would be. Later on that day the claimant was asked to come back to work and write a statement about what had occurred and Dora was requested to do the same. On February 27, the claimant was requested to return to work at which time she was discharged by Ms. Heinz.

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

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 to establish that an employee was discharged for substantial job-related misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). In the present case the employer did not participate in the hearing to rebut any of the claimant's assertions. The claimant maintains she had not been shouting but only Dora and the employer did not present any evidence or testimony to contradict that. The administrative law judge concludes the employer has not met its burden of proof and the claimant has established that she was not guilty of any misconduct. Disqualification may not be imposed.

**DECISION:**

The representative's decision of March 29, 2012, reference 01, is reversed. Karen Western is qualified for unemployment benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs