IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

ANGELA R DIERS
Claimant

DEXTER LAUNDRY INC
Employer

APPEAL NO. 18A-UI-06125-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/02/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Angela Diers (claimant) appealed a representative's May 25, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Dexter Laundry (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 20, 2018. The claimant participated personally. The employer participated by Todd Reifsteck, Director of Human Resources; Katie Six, Senior Human Resources Administrator; and Eric Jensen, Plant Manager. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in the summer of 2014, as a full-time seasonal production worker. On September 2, 2014, the claimant was hired as a full-time production worker. The claimant received the employer's collective bargaining agreement. The collective bargaining agreement indicated that five warnings during a worker's employment would result in termination. The plant manager told the claimant that if she went one year without a warning, one warning would be removed from her record.

She signed for the employer's harassment policy on July 28, 2014, when she was a seasonal worker. The employer defined harassment, in part, as denigrating an individual or race due to national origin. The policy stated that a hostile work environment is when an employee's behavior has the purpose or effect of creating an intimidating, hostile or offensive work environment. The claimant worked with employees who cussed and used the word "fuck" frequently. Her supervisor's used these words from time to time. Since President Trump's election, it was common for workers to talk about hating blacks or hating foreigners. The claimant was unaware of any person who was reprimanded for their language at work.

On February 9, 2015, the employer issued the claimant a verbal warning for work performance. The employer notified the claimant that further infractions could result in further disciplinary action. On September 22, November 10, 2015, March 11, 2016, and March 21 2017, the employer issued the claimant warnings for work performance. The employer notified the claimant each time that further infractions could result in termination from employment. The employer did not terminate the claimant for her fifth written warning and no explanation was given on the March 21, 2017, warning for the employer's failure to follow the collective bargaining agreement language.

On May 4, 2018, a co-worker was dancing and singing Mexican songs for the upcoming Cinco de Mayo holiday. The claimant said she hated fucking Mexicans. She meant illegal Mexicans. The claimant saw that she hurt the co-workers feelings, apologized, and tried to explain. The co-worker complained to the employer and said she was offended. The employer issued the claimant a suspension for creating an offensive work environment and sent her home. On May 8, 2018, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Whether the use of improper language rises to the level of misconduct depends on the context in which it is said "and the general work environment." See *Myers v. Employment Appeal Board*, 462 N.W.2d 734, 738 (Iowa Ct. App. 1990).

In the case at hand, the claimant stated her opinion in a manner that had been acceptable in the workplace in the past. The dancing, singing employee was offended and complained. The employer did not prove why the claimant should be treated differently than other employees who made statements about blacks and foreigners.

If management wishes all workers to be treated with respect, it must enforce respectful treatment amongst coworkers and supervisors and apply those expectations consistently throughout the chain of command. Since the employer provided a workplace where swearing and racial statements were allowed, the claimant's singular statement does not rise to the level of disqualification. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because she was an eye witness to the events for which she was terminated. The employer did not provide any eye witnesses or written statements to support its case.

DECISION:

The representative's May 25, 2018, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs