

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**CONNIE S HERRON**

Claimant,

and

**REM IOWA COMM SVCS INC**

Employer.

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**HEARING NUMBER: 14B-UI-07377**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-2-A**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The Claimant, Connie S. Herron, worked for Rem Iowa Community Services., Inc. from February 28, 2013 through June 25, 2014 as a full-time direct support professional. (7:40-8:22) On June 17<sup>th</sup>, 2014, the Claimant was on her way home. (37:26) As she checked out at 3:00 p.m., and was on her way to the restroom, the phone rang to which she shook her head 'no' when someone else answered the phone. (37:26-37:45) She did not know who called as she was on her way out.

When she returned to work the next day June 18<sup>th</sup>, 2014, she noted that both of her consumers seemed agitated and wanted to go for a walk. (\*5:15-5:48) When the consumers returned from their walk, one of them pointed her finger in Ms. Herron's face shouting. (\*6:35-6:58) The Claimant became upset and sat outside to calm down. She then called her direct supervisor (Tammy Nimmers) on her cell phone to complain that a consumer was acting like a 'b-tch.' (10:11-10:20; 10:40-10:47; 34:05-34:28) There were a couple of other consumers in the vicinity who were considered high-functioning that may have overheard her. (15:33-15:54) Her supervisor, in turn, contacted the Employer to report the Claimant's comment who

followed up on the matter. (34:23-34:50) The Claimant had never received any warnings about this type of behavior, but she had been ‘talked to’ about her professionalism, one of which occurred in September of 2013. (14:30-15:00; 25:00-25:15; 27:32-29:07; 29:17-29:29; 29:54-30:10)

The Employer terminated Ms. Herron for referring to a consumer as a “b-tch” on June 17, 2014 in violation of company policy. (8:31-9:09)

(\*2<sup>nd</sup> recording)

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

871 IAC 24.32(4) provides:

*Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In the cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The Employer did not submit any documentation to corroborate that the Claimant had been disciplined for any infraction in the past. In fact, the Employer, admittedly, received information about the June 18<sup>th</sup> incident, third-hand. (19:29) And although the Employer alleges that she had discussed the Claimant’s unprofessional interaction, i.e., getting personal, etc., with the consumers on several occasions, the Employer also admitted that none of those discussions were considered warnings of any type such that the Claimant was put on notice that her job was in jeopardy.

It is clear Ms. Herron was upset at the consumers’ aggressive behavior toward her when she reported to work on June 18, 2014. According to the Claimant’s testimony, which we believe, she did nothing to trigger their actions and tried to reduce the tension by leaving the area. Ms. Herron’s reference to a consumer as behaving like a ‘b-tch’ was certainly unprofessional, and we do not condone such behavior. However, while the employer may have compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. *Budding v. Iowa Department of Job Service*, 337 N.W.2d 219 (Iowa App. 1983); see also, *Breithaupt v. Employment Appeal Board*, 453 N. W. 2d 532, 535 (Iowa App. 1990). At worst, the Claimant’s comment was an isolated instance of poor judgment that did not rise to the legal definition of misconduct. Iowa law provides that “...inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct ...” Based on this record, we conclude that the Employer failed to satisfy their burden of proof.

**DECISION:**

The administrative law judge's decision dated August 27, 2014 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, the Claimant is allowed benefits provided she is otherwise eligible.

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Kim D. Schmett

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Ashley R. Koopmans

AMG/fnv