

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHY D ADAMS
Claimant

APPEAL NO: 07A-UI-02846-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRESTVIEW ACRES INC
Employer

**OC: 02/18/07 R: 03
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 15, 2007, reference 03, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on April 5, 2007. Claimant participated. Employer participated through Susan Tharp.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time CNA/oral med technician from January 4, 2005 until February 19, 2007 when she was discharged. On February 16 claimant had food and drinks on top of the medication cart and her cell phone was ringing, which offended a family member. When confronted by the charge nurse she called the family member a “bitch” and challenged the charge nurse to fire her. Theresa Meyer, food service supervisor, overheard the name-calling. Claimant knew of the policy and consumed the food and beverage because she “was hungry.” Employer’s policy prohibiting food and drinks on the medication cart is for sanitation and infection control. Claimant had no prior warnings and denied calling the resident’s daughter a “bitch” but claimed she said “I don’t know why she’s bitching about my phone.”

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). "The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. EAB*, 462 N.W.2d 734 (Iowa App. 1990).

Claimant's deliberate consumption of food and a beverage while operating the medication cart, knowing employer's policy for health and sanitation reasons, is evidence of her willful intent to violate that policy to the detriment of employer and is misconduct. The use of "bitch" or "bitching" in reference to a resident's daughter was also sufficient to warrant a finding of misconduct as "bitching" infers that the complainant is acting in the manner of a "bitch." Benefits are denied.

DECISION:

The March 15, 2007, reference 03 decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs