

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MYCHELLE L WINFREY**  
Claimant

**MARKETLINK INC**  
Employer

**APPEAL 15A-UI-13235-EC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/08/15**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin Code. R. 871-24.32(1)a – Misconduct Defined

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the November 25, 2015, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for misconduct. The parties were properly notified of the hearing. A telephone hearing was held on December 17, 2015. The claimant, Mychelle Winfrey, participated and testified. The claimant's witness and co-worker, Laneisha Propps, also testified. The employer, Marketlink Inc., participated through the testimony of Kelly Hauschildt, Call Center Director; Travis Hoffpauir, Supervisor; and Kim Passick, Regional Call Center Director. Exhibits E-1, E-2, and E-3, all submitted and offered by the employer, were marked and admitted into the record. Exhibit E-1 was admitted over the claimant's objection. Exhibit C-1, the appeal letter, was also admitted into the record.

**ISSUE:**

Was the separation from employment a disqualifying discharge for misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a telephone sales representative from September 4, 2013, until this employment ended on November 9, 2015, when her employment was terminated.

The claimant was involved in an incident on November 5, 2015, in the parking lot, at the end of the work day, with other co-workers. She was helping Ms. Propps avoid an argument with another coworker. The other coworkers were threatening to fight with Ms. Propps. (Winfrey testimony; Propps testimony)

On November 6, 2015, the claimant was brought into the call center director's office to discuss the incident. During the meeting, the claimant interrupted and mimicked the call center director, slamming her fists on the table. (Exhibit E-3; Hauschildt testimony; Hoffpauir testimony) The claimant disregarded the clear instructions her supervisor and manager provided. She continued to demonstrate disrespect for her supervisors during the meeting. She then

threatened coworkers and disrupted the work environment, after she was specifically told not to do so. (Exhibit E-3; Hauschildt testimony; Hoffpauir testimony)

The meeting on November 6, 2015 meeting was intended to present and discuss a second written warning. The claimant refused to sign this warning. The warning and meeting was initially intended as part of an investigation, to gather more information about the incident. The claimant's behavior during the meeting and immediately afterwards led to her termination. (Hauschildt testimony; Passick testimony)

Ms. Passick and Ms. Hauschildt were involved in the discussion and decision to terminate the claimant's employment on November 9, 2015. Her behavior on November 6, 2015, was the "straw that broke the camel's back" leading to her termination. (Passick testimony)

The claimant received a prior written warning on October 2, 2015, for similar behavior: yelling, using profanity, and disrupting the workplace. (Exhibit E-1; Hauschildt testimony)

### **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. Benefits are denied.

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.

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer is entitled to expect its employees to treat her co-workers and supervisors with respect, and to refrain from threatening and intimidating language and behavior. The employer presented substantial and credible evidence that the claimant continued to use threatening, intimidating, abusive language and displayed blatant and public disrespect for her supervisors and managers while on duty, after she was warned, twice, not to do so. (Exhibit E-2, E-3) She received a prior warning one month prior for similar conduct. (Exhibit E-1) She refused to sign the second written warning. This is disqualifying misconduct. The employer met its burden of proof.

**DECISION:**

The November 25, 2015, (reference 01) unemployment insurance 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.

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Emily Gould Chafa  
Administrative Law Judge

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Decision Dated and Mailed

ec/css