

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHEILA S AMBROSE
Claimant

CBE COMPANIES INC
Employer

APPEAL 14A-UI-12160-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/26/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 14, 2014, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. An in person hearing was held on January 26, 2015 in Waterloo, Iowa. Claimant participated. Employer participated through Toni Babcock, Human Resources Director and (representative) Donald Stith, Director of Operations. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an insurance follow up representative beginning on June 17, 2013 through October 13, 2014 when she was discharged. The claimant was discharged for making inappropriate threatening comments to her supervisor on October 10. The claimant had been called into a meeting where she was going to be disciplined for failing to meet quality assurance standards. The claimant alleges that her supervisor Danielle Comer personally picked the calls she was going to be evaluated on in order to harass her. Ms. Comer did not pick the calls the claimant was going to be evaluated on; they were randomly picked by the quality assurance team. During the course of the meeting the claimant became animated and made threatening remarks to her supervisor, Ms. Comer. The remarks were overheard by Mr. Stith. Ms. Comer is no longer an employee thus she did not testify at the hearing.

The claimant was disrespectful to Ms. Comer telling her in part that she was probably abused at home and miserable. The claimant then did tell Ms. Comer that going forward Ms. Comer was going to have a huge problem with her especially since she was a different skin color. The claimant also told Ms. Comer that no one liked her. The claimant admits that if she made the statements the employer alleged, they were a violation of the employer's workplace rules and regulations. The claimant had one prior write up for speaking inappropriately to a coworker in May 2014.

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.

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 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 claimant knew that inappropriate comments were not allowed in the workplace. The claimant was mistaken that Ms. Comer had picked her calls in order to 'harass' or pick on her. The employer established that the calls were randomly picked by the quality assurance team. Despite the claimant being upset because she felt she was being treated unfairly, she was still under an obligation to treat her supervisor and others in a respectful manner. The administrative law judge finds Mr. Stith's testimony more persuasive than that of the claimant.

Mr. Stith was a newer employee and had no prior issues with the claimant. The claimant did make remarks during the October 10 meeting that a reasonable person could interpret as threatening. The claimant's comments are sufficient work connected misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The November 14, 2014 (reference 01) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs