

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAY A IVERSON
Claimant

IOWA RIVER HOSPICE INC
Employer

APPEAL 21A-UI-24161-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/26/21
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant, Kay A. Iverson, filed an appeal from the October 19, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits based upon claimant’s separation from employment.

The parties were properly notified about the hearing. A telephone hearing was held on December 22, 2021. The claimant participated personally. The employer /respondent, Iowa River Hospice Inc., was represented by Ann Smisek, attorney at law. Emily Carson, Trish Patton, Danielle Plaehn and Conny Schutte participated for the employer. The administrative law judge took official notice of the administrative records. Employer Exhibits 1-8 and Claimant Exhibits A-C were admitted. The hearing was continued to December 30, 2021, for the limited purpose to allow claimant to resubmit Claimant Exhibit D, a recording of the final incident.

A second telephone hearing was conducted on December 30, 2021 to address the issue of Claimant Exhibit D. The claimant participated personally. Ann Smisek represented the employer. Claimant’s Exhibit D was admitted without objection, closing statements were made by both parties, and appeal procedures were explained. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a hospice care provider. The claimant began employment in July 2014, and worked part-time as the volunteer coordinator until she was discharged on August 9, 2021.

When the claimant was hired, and throughout employment, she was trained on employer rules and procedures. The employer’s expectations included professionalism and courtesy.

Prior to a meeting being called on August 5, 2021, the claimant had an incident with a co-worker on August 4, 2021. The co-worker's job duties included compliance with safety measures related to COVID-19. Due to rising cases of COVID-19, the employer had stated employees needed to resume wearing masks when meeting with each other, regardless of vaccination status. When the co-worker observed the claimant and a medical student meeting in close proximity without masks on, and in light of recent reminders, she opened the door to claimant's office and stated claimant and the student needed to mask up.

Claimant described the interruption as "startling", "busting through" the door. The co-worker said to the claimant and the med student, "put your masks on." The claimant replied with a raised voice, "are you kidding me?" The claimant's response triggered the employer calling a meeting on August 5, 2021.

Claimant decided to secretly record the meeting (Claimant Exhibit D), which captured the entire conversation between parties. Along with the claimant, and the co-worker from the incident before, the employer had three additional employees, which included the claimant's immediate supervisor and human resources representative.

The meeting began with the employer telling the claimant there was a problem. Within a few sentences of the employer explaining why they had called the meeting, the claimant became audibly agitated, and began interrupting the employer. As the employer recapped the August 4, 2021 incident with the co-worker, the claimant stated the co-worker had "kicked down the door" and acted "like you have a cape".

For the duration of the meeting, claimant continued to interrupt, often with sarcasm, with comments like, "oh really?" and "don't treat me like a child" (Claimant Exhibit D). She also deflected responsibility for her own actions, and made comments including "go ahead, scold me", "I'll be the fall guy", and "I can't be controlled. I can't be brainwashed" (Claimant Exhibit D).

The claimant at one point said to her co-worker, "Who are you? You're PRN (on-call) (Claimant Exhibit D)". The employer ended the meeting by telling the claimant that her conduct was insubordinate. The claimant responded by saying, "OK. Write me up" (Claimant Exhibit D).

The claimant was sent home and the decision made to discharge her based upon her conduct in the meeting.

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 unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

It cannot be ignored that the purpose of the employer's meeting with the claimant on August 5, 2021 was to address her being disrespectful to her peer the day before. The employer did not intend to fire the claimant for the August 4, 2021 interaction, but to verbally warn her. While the administrative law judge recognizes the claimant may have felt "ganged up on" with four employees in the meeting and her being alone, it does not justify or mitigate her conduct throughout the meeting. The evidence presented through the recorded conversation is clear: the claimant became insubordinate inasmuch as she refused to allow the employer to communicate, by way of continuous interruptions, demanding answers and upon being told she was being insubordinate, saying, "OK. Write me up!"

The administrative law judge is not persuaded the claimant's actions on August 5, 2021 were the result of a misunderstanding, miscommunication or isolated instance of being caught up in emotion. The claimant's conduct on August 4 and 5, 2021 with the employer, was unprofessional, disrespectful and insubordinate. The claimant raised her voice, refused to listen to the employer, continuously interrupted and argued with the employer. Regardless of whether the claimant had any valid concerns, her method of communicating to the employer was contrary to the respectful conduct an employer has the right to expect of its employees.

An employer has the right to communicate its expectations to employees, whether it be through formal discipline or feedback. The claimant may not have agreed with the verbal warning, meeting, or felt defensive, but it does not negate her refusal to allow the employer to respectfully communicate with her. The administrative law judge is persuaded the claimant's actions on

August 4 and 5, 2021 were sufficient to establish the claimant was discharged for misconduct. Based on the evidence presented, the claimant knew or should have known her conduct was in disregard of the employer's interests and reasonable standards of behavior that the employer has a right to expect of its employees. The employer has established the claimant was discharged for misconduct. Benefits are withheld.

DECISION:

The October 19, 2021 (Reference 01) initial decision is AFFRIMED. 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.



Jennifer L. Beckman
Administrative Law Judge
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January 28, 2022
Decision Dated and Mailed

jlb/mh

NOTE TO CLAIMANT: Individuals who do not qualify for regular unemployment insurance benefits, but who were unemployed or continue to be unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). For information regarding the Pandemic Unemployment Assistance (PUA) program, please contact IWD at 1-866-239-0843 or email: UIclaimshelp@iwd.iowa.gov. On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>