

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE L IRWIN
Claimant

APPEAL NO. 07A-UI-07540-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLS & DALES CHILD DEV CENTER INC
Employer

**OC: 07-01-07 R: 04
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 26, 2007, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on August 29, 2007. The claimant did participate. The employer did participate through (representative) Carol Boge, Human Resources Manager; Kris Kurt, Director of Community Operations; Mary Lou Koehler, HCBS Supervisor; Nikki Leibfried, HCBS Supervisor; and Amy Rave, Director of Administrative Support and Finance. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a personal assistant, full-time, beginning November 29, 2006, through June 29, 2007, when she was discharged.

The claimant was disciplined on June 29, 2007, during a meeting led by Kris Kurt and attended by the claimant and Mary Lou Koehler. At the meeting, the claimant swore at Ms. Kurt when she stood up and said, "go ahead and fucking fire me." The claimant then walked out of the meeting before its conclusion. Earlier in the meeting, the claimant had told Ms. Kurt that she was not going to work while another employee sat on her "ass." The claimant also told Ms. Kurt that she believed the disciplinary action was "bullshit." The entire meeting was witnessed by Ms. Koehler, who confirmed that the claimant had signed a warning notice and had used profanity when speaking to Ms. Kurt.

The claimant had been given a copy of the employer's rules of conduct, which prohibit using profane or obscene language towards clients or coworkers.

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.

"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).

The claimant was upset she was being disciplined and swore at Ms. Kurt. The administrative law judge is persuaded, based on the testimony of Ms. Kurt and Ms. Koehler, that the claimant did in fact use the profanity she now denies. Use of profanity is against the employer's rules, a copy of which had been given to the claimant, and against commonly held standards of behavior. The claimant may have been upset she was being disciplined, but that did not give her the right to use profanity toward Ms. Kurt and to walk out of a meeting. The claimant's actions constitute misconduct sufficient to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The July 26, 2007, reference 02, 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. Inasmuch as no benefits were claimed or paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw