

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARY A NELSON**

Claimant

**APPEAL NO. 12A-UI-06454-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**

Employer

**OC: 05/06/12**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated May 23, 2012, reference 01, that concluded the claimant was eligible for benefits because she was forced to quit or be discharged. A telephone hearing was held on June 26, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Mary Eggenburg participated in the hearing on behalf of the employer with a witness, Gordon Tribbey.

**ISSUES:**

Did the claimant voluntarily quit or was she discharged?

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full-time for the employer as law library associate director from July 1, 1995, to January 3, 2012. About three years before her employment ended, her supervisor told her that she needed to watch her conduct toward employees.

Near the beginning of December 2011, the claimant had become frustrated with a staff member, Druet Klugh. The claimant and other staff members had been cleaning an office. Klugh had moved some of the files that the claimant had organized, which upset the claimant. She went into the office of Dawn Banovitz, administrative services manager, and commented something to the effect: "I could just shoot Druet for moving those files." This was an expression of frustration, not an actual threat of violence toward Klugh. Another employee overheard the comment and reported it to Gordon Tribbey, assistant dean for finance and administration. The claimant was placed on administrative leave on December 15, 2011, pending an investigation into the claimant's conduct.

The employer conducted an investigation and received reports from employees that the claimant had in the past been discourteous, yelled, and used profanity toward employees, and had improperly denied employee's leave. Management decided the claimant had violated the employer's workplace violence, ethics, and anti-retaliation policies. As a result, on January 3,

2012, the employer informed the claimant that she was being terminated or she could resign in lieu of being terminated. The claimant resigned in lieu of being discharged.

The claimant never directed profanity at employees but would at times speak loudly and was abrasive in dealing with employees. She did not deny requested leave to employee unless there was no staff coverage for the library and did not ever do so for retaliatory reasons.

### **REASONING AND CONCLUSIONS OF LAW:**

The 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. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). The rules make it clear that a claimant who is given the choice of resigning or being discharged has not voluntarily quit employment. 871 IAC 24.26(21). Instead, the separation must be treated as a discharge and the question of whether the discharge was for misconduct must be determined.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

Finally, 871 IAC 24.32(8) provides: "While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act."

The current act of alleged misconduct that must be evaluated is the comment the claimant made about Druet Klugh. The claimant testified credibly about this incident, and her testimony outweighs the testimony from Tribbey, who had no personal knowledge of what happened. As my findings show, this comment is a common expression of frustration and could not be reasonably interpreted as an actual threat of violence toward Klugh. I also believe the claimant's credible testimony that she never denied leave for retaliatory or other inappropriate reasons or directed profanity toward employees. The evidence presented by the employer was all hearsay evidence of reported conduct by the claimant without any specificity regarding the dates of the alleged conduct.

While the employer may have been justified in discharging the claimant, no current work-connected misconduct as defined by the unemployment insurance law has been established.

**DECISION:**

The unemployment insurance decision dated May 23, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw