

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDY M BAKER
Claimant

DES STAFFING SERVICES INC
Employer

APPEAL 19A-UI-04143-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/14/19
Claimant: Appellant (5)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 15, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit her employment for personal reasons. The parties were properly notified of the hearing. A telephonic hearing was held on June 14, 2019. The claimant, Brandy M. Baker, participated. The employer, Des Staffing Services, Inc., participated through Gayle Darrah, Operations Manager; David Redman, Assistant Operations Manager; and Stacy Navarro, HR Coordinator. Employer's Exhibits 1 through 12 were received and admitted into the record without objection.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a receptionist, from April 23, 2018, until April 17, 2019, when she was discharged.

On April 16, claimant was working while Redman and Darrah were both at lunch. Darrah was called back to the office in the middle of her lunch to deal with a work matter. She and Redman returned around the same time, and both noticed that there were several people waiting in the lobby area. Darrah went into her office, and claimant followed her inside. Claimant asked Darrah what she was supposed to do with all the people in the lobby. Darrah told her she was dealing with another matter, and said, "I don't care right now," and asked her to hold on. Claimant then said she was going to go "smoke a fucking cigarette." Darrah responded that claimant could not do that because she needed to deal with the people in the lobby, as Darrah was going to finish her lunch break after the call she was on. Claimant replied, "I don't give a fuck about your break." She then turned around and walked out of the office. Both claimant and Darrah were yelling, and the people in the lobby and throughout the office could hear them.

The next day, claimant returned to work and worked the majority of her workday. Darrah and Redman then called her into the office. Claimant commented that she did not want to be there anymore and would not be there tomorrow. She then sat down, and Darrah and Redman began discussing claimant's attitude issues. Claimant asked Darrah if she was being fired, and Darrah said it was out of her hands. She explained that CJ, the owner, had overheard claimant yelling at Darrah the day before and wanted claimant to be discharged. Redman then took claimant to her desk so she could gather her personal belongings.

Claimant had a prior altercation with Darrah on February 28, 2019. Claimant had left work to attend a group meeting, and the meeting did not happen, so claimant texted Darrah to ask if she could take the rest of the day off. Darrah told her she needed her to return to work. When claimant returned, she was not happy. She then asked for the next day off, and Darrah told her that she needed her to be at work. Claimant got upset, because she felt that whether she got time off was unfairly revolving around other people's schedule. Claimant began yelling at Darrah about this issue. An employee and a customer in the lobby both witnessed this. After Darrah left, claimant went to Darrah's supervisor, Brian Moussalli, to ask for the next day off. Moussalli spoke to Darrah, and they agreed to give claimant time off provided that when she returned from her time off, her attendance issues improved. When claimant returned, Darrah spoke to her and let her know that the way claimant had yelled at her was unacceptable. Claimant then apologized to Darrah.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

As an initial matter, the administrative law judge must determine whether claimant quit or was discharged. Iowa Code §96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

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. The burden of proof rests with the employer to show that the claimant voluntarily left the employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that

intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case, the employer has not established that claimant quit her employment. Even if claimant commented that she did not want to be there anymore, she took no overt action in furtherance of an intent to quit. Additionally, regardless of what claimant intended, her employment was going to end during the April 17 meeting. The administrative law judge finds claimant did not quit her employment. Therefore, this case will be analyzed as a discharge from employment and the employer bears the burden of establishing disqualifying 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). 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 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. The question of whether the use of improper language in the workplace is misconduct is nearly always a fact question. It must be considered with other relevant factors, including the context in which it is said, and the general work environment.” *Myers v. Emp’t Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Vulgar language in front of customers can constitute misconduct, *Zeches v. Iowa Dep’t of Job Serv.*, 333 N.W.2d 735, 736 (Iowa Ct. App. 1983), as well as vulgarities accompanied with a refusal to obey supervisors. *Warrell v. Iowa Dep’t of Job Serv.*, 356 N.W.2d 587, 589 (Iowa Ct. App.1984).

In this case, the employer discharged claimant for yelling at and disrespecting Darrah. Claimant had been warned in the past after yelling at Darrah. She was made aware that this type of behavior was not appropriate for the work environment. During the final incident, claimant both yelled at Darrah and used profanity toward her in an aggressive manner. Further, claimant was overheard by both co-workers and the several people waiting in the employer’s lobby. Claimant acted in deliberate disregard of the employer’s interests. The employer has established that claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The May 15, 2019, (reference 01) unemployment insurance decision is modified with no change in effect. Claimant did not quit but 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn