

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**PENNY J ACKERSON**  
Claimant

**APPEAL 19A-UI-00058-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CENTRAL AVENUE HEALTHCARE INC**  
Employer

**OC: 06/17/18  
Claimant: Appellant (2)**

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Iowa Code § 96.5(2) – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32 – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Penny Ackerson, Claimant, filed an appeal from the December 24, 2018 (reference 05) unemployment insurance decision that denied benefits because she was discharged from work with Central Avenue Healthcare, Inc. due to insubordination. The parties were properly notified of the hearing. A telephone hearing was held on January 18, 2019 at 9:00 a.m. Claimant participated. Employer participated through Emily Wurzer, Executive Director. No exhibits were admitted.

**ISSUE:**

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a laundry worker from May 31, 2016 until her employment with Central Avenue Healthcare, Inc. ended on June 15, 2018. (Wurzer Testimony) On June 15, 2018, employer called claimant on the telephone to suspend her for violations of the laundry standards and expectations. (Wurzer Testimony) During the telephone call, employer decided to terminate claimant's employment based upon "disrespectful comments" by claimant in response to the disciplinary action. (Wurzer Testimony) Employer does not recall exactly what claimant said or whether claimant used profanity. (Wurzer Testimony)

Claimant received a written warning on April 12, 2018 for aggressive conduct and vulgar language in violation of company policy. (Wurzer Testimony) During a conversation with her supervisor regarding laundry standards and expectations, claimant rolled her eyes, scoffed, raised her voice, interrupted others, talked over her supervisor, used profanity, pushed a chair and slammed a door. (Wurzer Testimony)

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

Iowa Code section 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 disqualification shall continue 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. 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. (emphasis added)

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000).

The reason employer terminated claimant's employment was the statements that claimant made on June 15, 2018. Employer has not provided detailed facts as to claimant's statements that employer described as disrespectful. In contrast, employer provided great detail regarding claimant's conduct that led to her written warning on April 12, 2018. Employer's allegation of misconduct by claimant on June 15, 2018 without additional evidence is not sufficient to result in disqualification. Employer has not met its burden of proving a "current act" disqualifying, job-related misconduct by claimant. Benefits are allowed provided claimant is otherwise eligible.

**DECISION:**

The December 24, 2018 (reference 05) unemployment insurance decision is reversed. Benefits are allowed provided claimant is otherwise eligible.

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Adrienne C. Williamson  
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Decision Dated and Mailed

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