

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**CURTIS L JASA**  
Claimant

**VA CENTRAL IA HEALTH 05**  
Employer

**APPEAL 15A-UI-01331-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/04/15**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 29, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the claimant's separation. The parties were properly notified about the hearing. A telephone hearing was held on February 26, 2015. The claimant participated and was represented by Lonnie Brackett. The employer participated through Melissa Close. Billie Kindred also testified. Claimant Exhibit One and Employer Exhibit One were admitted.

**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 claimant was employed full-time as a medical support technician and was separated from employment on January 7, 2015, when he was discharged.

The claimant sent an email on December 18, 2014 to his manager, addressing his frustrations and concerns with his unhappiness with the recent bonuses awarded to some employees, as well as his account of his co-workers. Specifically, he said,

...let's count up all the behavioral stuff that has gone in this department from Donna's accident claim and fake accent, Carol's burnt down apartment, twice, missing tons of work, Booker and Terrance fighting requiring the cops to show up, Tom is a raging alcoholic, Sondra is histrionic, Wendy is socially dysfunctional... (Claimant Exhibit One)

The claimant's manager called him into his office to discuss the email sent and its lack of professionalism. During this conversation, the claimant said "damn" or "fuck" twice, but stopped after his manager requested the second time. The claimant was subsequently discharged for the email and profanity used during the meeting (Employer Exhibit One). Prior to the email on December 18, 2014, the claimant had no disciplinary history.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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).

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

(4) Report required. The claimant's statement and the 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.

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 conduct for which claimant was discharged was merely an isolated incident of poor judgment. The claimant was frustrated about his peers and ongoing issues. He followed the chain of command in reporting his concerns and could have used more professional language and refrained from repeating a single profanity word twice during the conversation with Mr. Kindred. Inasmuch as the employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Training or general notice to staff about a policy is not considered a disciplinary warning. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof and the claimant's conduct leading separation was not misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

**DECISION:**

The January 29, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

jlc/pjs