

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIFFANY A STREEBY**  
Claimant

**APPEAL NO. 13A-UI-11180-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**INDIAN HILLS COMMUNITY COLLEGE**  
Employer

**OC: 09/08/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Tiffany Streeby (claimant) appealed a representative's September 27, 2013, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Indian Hills Community College (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 24, 2013. The claimant was represented by Sarah Wenke, Attorney at Law, and participated personally and through former student Thomas Ellis. The employer participated by Bonnie Campbell, Director of Human Resources, and Darlas Shockley, Executive Dean of Arts and Sciences. The claimant offered and Exhibit A was received into evidence. The claimant offered and Exhibit A was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 13, 2010, as a part-time adjunct instructor/tutor. The employer has a handbook but the claimant did not receive it. The employer did not issue the claimant any warnings during her employment. She met expectations in her evaluations. The claimant worked as a tutor out of the employer's math lab. When students were not in the math lab, tutors and instructors talked with each other in a relaxed manner. One instructor would say "just shoot me" on occasion.

On August 26, 2013, the claimant was surprised when the employer reduced her job duties. She went to get coffee and take a breather. Before she left she said to herself "Does anyone have a gun, preferably loaded?" The claimant returned and discovered that her co-workers knew about her reduction of job duties. She asked twice "You knew"? The claimant was hurt by the news. She finished her work and left for the day. After that day the claimant returned to work and tried her best.

On September 9, 2013, the incident was reported to the employer as the claimant saying she wished she had a gun and bullets. Someone said the claimant was screaming and yelling but the claimant denied doing so. One witness may have reported feeling uncomfortable. The employer terminated the claimant on September 10, 2013, because she made a statement about a gun.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony or to provide written statements. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. While the claimant's utterance under her breath was not the best choice of words, it does not rise to the level of misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's September 27, 2013, decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs