

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JENA M TAKES**

Claimant

**APPEAL 17A-UI-05867-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABCM CORPORATION**

Employer

**OC: 04/30/17**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Jena M. Takes (claimant) filed an appeal from the June 1, 2017, reference 02, unemployment insurance decision that denied benefits based upon the determination ABCM Corporation (employer) discharged her for engaging in conduct that was not in its best interest. The parties were properly notified about the hearing. A telephone hearing was held on June 22, 2017. The claimant and her friend Nancy Meeks participated. The employer participated through Administrative Krystal Klostermann. No exhibits were offered or received.

**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 Housekeeper beginning on February 17, 2017, and was separated from employment on April 19, 2017, when she was discharged. The employer has a written policy that does not allow employees to engage in insubordination or display uncooperative or negative behavior. Initially, the claimant had a positive attitude toward her job, but at some point her attitude changed based on perceived unfairness by the employer toward other employees and residents.

On April 5, 2017, the claimant received a written warning for a time clock issue. On April 13, 2017, the claimant received her first written warning related to a negative or uncooperative attitude and insubordination. The claimant had been complaining about her job duties and previous write-up to at least one other employee. She was told further issues could result in discipline up to and including discharge.

On April 18, 2017, the claimant asked the corporate designer if all of the beds needed pillows. The corporate designer answered affirmatively. The claimant then stated it was another co-worker's job, the young skinny blonde's job, to put the pillows on the beds, and the claimant predicted she would get blamed for the lack of pillows. The corporate designer reported the incident to Administrator Krystal Klostermann.

The following day, Klostermann and the claimant's supervisor were giving her a written warning for the incident with the corporate designer. They went through all of the information on the written warning, including the part that stated further violations could lead to further discipline including termination. Klostermann asked the claimant what she could do to correct or improve the situation. The claimant initially stated she just would not talk to anyone any longer. Klostermann explained that was not a helpful response. The claimant then loudly stated, "If people wouldn't blow things out of proportion and quit nit-picking, I'd be fine." Klostermann told the claimant that it did not seem she was open to the feedback and, based on her negative response to the discipline for a negative attitude, her employment was terminated.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

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). 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). 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). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer has presented substantial and credible evidence that the claimant continued to display a negative and insubordinate attitude after having been warned. Her repeated failure to comply with the reasonable directives of the employer after having been warned is evidence of

negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Accordingly, benefits are denied.

**DECISION:**

The June 1, 2017, reference 02, unemployment insurance decision is affirmed. The claimant 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.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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