

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TRACI A LOGGINS**  
Claimant

**WELLS ENTERPRISES INC**  
Employer

**APPEAL 16A-UI-05268-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/10/16**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 28, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 20, 2016. Claimant participated. Employer participated through hearing representative, Raul Ybanez and human resources generalist, Andrea Rozell. Dave Holmberg registered on behalf of the employer, but he did not attend the hearing. Employer Exhibit One was admitted into evidence with no objection.

**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: Claimant was employed full time as a cat B helper from April 13, 2015, and was separated from employment on April 13, 2016, when she discharged.

The employer has written employee conduct and work rules. Employer Exhibit One. Employee conduct and work rules prohibit violence or threat of violence. Employer Exhibit One. Claimant was aware of the policy. Employer Exhibit One.

On April 9, 2016, claimant was working her scheduled shift. Claimant had an argument with her coworker, Amanda, in the locker room. The argument was witnessed by three other employees and they observed claimant tell Amanda she would kill Amanda. Employer Exhibit One. Claimant also stated she would kick Amanda's butt. Employer Exhibit One. Claimant had the ability to back up during the incident and could have left the locker room. Amanda reported the incident to security. Security investigated the incident and obtained statements from witnesses. Ms. Rozell spoke with claimant on April 13, 2016. Claimant told Ms. Rozell that things happened prior to the locker room incident. Claimant told Ms. Rozell it started on April 7, 2016, Amanda had been saying things to get under claimant's skin. Claimant admitted to saying she would kick Amanda's butt, but she did not recall saying she would kill Amanda. Claimant did not

tell the employer that Amanda put her finger on claimant. The witnesses did not observe Amanda put her finger on claimant.

Claimant had no prior warnings for similar behavior. Claimant had made no complaints about Amanda during her employment. Amanda had made no complaints about claimant prior to April 9, 2016. Claimant did not report the April 9, 2016 incident after it happened.

#### **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.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibit submitted. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has a known work rule that prohibits violence and the threat of violence. While the employer did not present the witnesses to provide sworn testimony or submit to cross-examination, the combination of employer exhibit one and Ms. Rozell's testimony, when compared to claimant's recollection of the event, establish the employer's evidence as credible. Claimant's argument that Amanda put her finger on claimant is not persuasive. None of the witnesses reported Amanda touching claimant. Furthermore, when claimant spoke to the employer about what happened, she did not tell the employer Amanda put her finger on claimant.

The employer has presented substantial and credible evidence that claimant threatened to kill a coworker after a coworker yelled at her. The employer has a duty to protect the safety of its employees. Claimant's threat of harm was contrary to the best interests of the employer and the safety of her coworker. The threat is misconduct even without prior warning. Benefits are denied.

**DECISION:**

The April 28, 2016, (reference 01) unemployment insurance decision is affirmed. 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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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/css