

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

APRIL SLECHTA

Claimant

APPEAL 21A-UI-07829-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION

Employer

OC: 01/24/21

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 4, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion she had been fighting on the job. The parties were properly notified of the hearing. A telephone hearing was held on May 26, 2021. The claimant participated. Sean Slechta provided testimony in support of the claimant. The claimant also registered Third Shift Supervisor Josh Martin, Third Shift Superintendent Scott Fillenworth and Jerry Suby. These additional witnesses were not called because the employer did not participate.

ISSUE:

Whether the claimant's separation is disqualifying?

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 team leader from August 29, 2017, until this employment ended on January 16, 2021, when she was terminated. The claimant's immediate supervisor was third shift supervisor Josh Martin. The third shift runs from midnight to 7:00 a.m. Sunday through Friday.

The employer's policies are listed in its employee handbook and collective bargaining agreement. The employer has a non-discrimination, threats and workplace violence policies. The claimant was not aware how these terms are described in the policies.

On January 6, 2021, the claimant had a near miss collision at the entrance to the employer's parking lot with another employee, Martaijah Harper. Sean Slechta was riding in the passenger's seat. This near collision resulted from Ms. Harper cutting in front of the claimant. The claimant parked her car. Ms. Harper almost then hit some pedestrians in the parking lot and abruptly stopped. Ms. Harper then backed into the claimant's vehicle hitting the passenger side of the claimant's car.

Over the next several minutes on January 6, 2021, the claimant and her brother Sean Slechta discussed what they would do after this accident. The claimant contacted the police to make a report and to facilitate the exchange of insurance information. The claimant and Ms. Harper had an argument because Ms. Harper declared she did not have insurance or a license. The claimant said to Ms. Harper, "I cannot believe you hit us." Ms. Harper replied, "I'll show you a hit." The claimant and Sean Slechta observed that Ms. Harper was threatening them. The claimant then said in jest under her breath to Sean Slechta, "Yeah right I'd beat her ass." Ms. Harper is five feet and eight inches tall and appeared to weigh 180 pounds on that day. The claimant is five foot and two inches tall and weighed 120 pounds on that day.

After several more moments on January 6, 2021, the police officer arrived on the scene. As the employees lined up for the beginning of the third shift, a crowd gathered which included Third Shift Supervisor Josh Martin, Third Shift Superintendent Scott Fillenworth and Jerry Suby. During the conversation with the police officer, the claimant recounted saying to Sean Slechta, "Yeah right I'd beat her ass." Ms. Harris heard this statement for the first time in front of the police officer.

Later that day on January 6, 2021, Third Shift Supervisor Nate Usher asked the claimant questions about the incident earlier that day. Third Shift Supervisor Josh Martin and Union Representative Loren Plottz were also present. Mr. Usher told the claimant that the employer was taking statements from everyone. He left the impression the claimant made a racist statement that day. The claimant did not make a racist statement that day. She was suspended pending the investigation.

On January 16, 2021, the claimant was terminated by Human Resources Manager Amih Sallah. Ms. Sallah did not give the claimant the reason for her termination.

On May 25, 2021, the claimant has received news from her union that she has successfully won her position back through arbitration.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for a non-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.

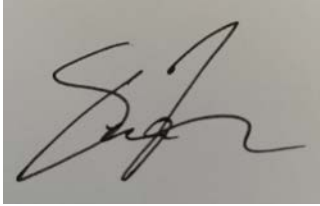
This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

"A threat constitutes a sufficient willful or wanton disregard of an employer's interest and of the standards of behavior which an employer has the right to expect of employees." *Deever v. Hawkeye Window Cleaning, Inc.*, 447 N.W.2d 418 (Ct. App. 1989). The Court of Appeals arguably used more measured language in subsequent opinions. See *Myers v. Employment Appeal Bd.*, 462 N.W.2d 734 (Ct. App. 1990)(stating "employee threats *may* rise to the level of behavior so as to constitute misconduct.")

The administrative law judge finds that the context in which the claimant's statement, "Yeah right I'd beat her ass," was not a threat. The claimant and Mr. Slechta credibly testified that Ms. Harper did not even hear this statement the first time it was uttered. Even if she had, the claimant noted she had already called the police to facilitate an insurance information exchange; this context diminishes any possibility that she made this statement to threaten Ms. Harper. In this context, the claimant was clearly making the statement in jest. The second time the claimant made this statement was to give an accurate description of the events related to the accident to the responding police officer. While the claimant acknowledges Ms. Harper heard this statement, no reasonable person could find the claimant's recounting of her earlier statement to the police officer was a threat. Benefits are granted, provided the claimant is otherwise eligible.

DECISION:

The March 4, 2021, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment due to a non-disqualifying reason. Benefits are granted.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
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June 18, 2021
Decision Dated and Mailed

smn/scn