

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**CIARA DUDLEY**  
Claimant

**APPEAL NO. 18A-UI-11005-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THOMAS L CARDELLA & ASSOCIATES INC**  
Employer

**OC: 01/14/18**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Thomas L. Cardella & Associates (employer) appealed a representative's October 30, 2018, decision (reference 03) that concluded Ciara Dudley (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 27, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer was represented by Edward Wright, Hearings Representative, and participated by Myka Gilchrist, Human Resources Manager. Exhibit D-1 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 5, 2017, as a full-time call center representative. The claimant signed for receipt of the employer's handbook on September 5, 2017. The handbook contains a policy on professionalism. It states that unprofessional behavior on the part of any employee will be taken very seriously. Any employees involved in a disagreement or conflict within the facility may both receive a final written warning. If either individual is involved in any type of disagreement or conflict a second time, that person's employment with TLC may be terminated.

The employer did not issue the claimant any written warnings. The site director talked to the claimant one or two times when he thought she was having a verbal altercation with a co-worker. He told her that if her actions caused a hostile work place, she could be terminated.

On October 10, 2018, a co-worker told the claimant she was going to make her deliver her baby. At that time the claimant was pregnant and reported the threat to her team lead. On October 11, 2018, the site manager walked outside and saw the claimant's husband arguing with claimant's co-worker in the street in front of the business. The claimant was on her lunch

break. She saw the argument but did not participate. The site manager suspended the claimant. On October 12, 2018, the site manager terminated the claimant. The co-worker was also terminated.

The claimant filed for unemployment insurance benefits with an effective date of October 29, 2016. The employer provided the name and number of Jada Curry as the person who would participate in the fact-finding interview on October 29, 2018. The fact finder called Ms. Curry, but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message.

### **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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to provide any evidence of a final incident of misconduct. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

**DECISION:**

The representative's October 30, 2018, decision (reference 03) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/rvs