

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELIZABETH J MYERS

Claimant

APPEAL 16A-UI-09227-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

OC: 07/31/16

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 22, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on September 14, 2016. Claimant participated personally and through interpreter Bangalee Trawally. Claimant's sister, Grace Quor, observed. Employer participated through human resource supervisor Nikki Bruno, supervisor Socorro Zamudio, and human resource manager Kathy Truelson.

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 began working for employer on August 9, 2011. Claimant last worked doing breast trim rotation. Claimant was separated from employment when she was suspended on July 22, 2016 and later terminated on August 1, 2016.

On July 22, 2016, claimant took co-worker Mui's knife and damaged it by putting it on the edge of a steel table and pushing hard which dulled and damaged the blade. When claimant noticed another co-worker, Maria, was watching she said, "You be careful. Don't tell [the co-worker]." Mui returned and began using the knife when she noticed there was something wrong with it. Claimant then began laughing. Mui confronted claimant.

Mui and claimant had a history of being unable to get along. They had been to the human resource department for counseling on numerous occasions. During the month prior to claimant's termination, they were informed they needed to treat each other with dignity and respect in the workplace. They were informed any further incidents could lead to disciplinary action up to and including termination.

Maria approached supervisor Socorro Zamudio and reported claimant. Zamudio reported the situation to the human resource department. Employer suspended claimant on July 22, 2016,

without pay. Employer interviewed claimant and Maria. Claimant became defensive during her interview. Employer determined Maria's version of events was more credible when coupled with claimant's history of discord with Mui.

Employer terminated claimant's employment on August 1, 2016.

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.

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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job*

Serv., 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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).

In this case, claimant intentionally damaged her co-worker's knife by dulling the blade and intimidated another co-worker to prevent her from reporting the incident. Although claimant denies engaging in the conduct in question, she admits Maria had no motive to falsely report the incident. Claimant had no history of problems with Maria. Claimant's history of being unable to get along with Mui also supports the conclusion that claimant engaged in the conduct. I find employer's version of event's more credible than claimant's.

The employer has presented credible evidence that claimant disrespected her co-worker after having been warned. Additionally, claimant damaged employer's property and attempted to intimidate her co-worker which is in deliberate disregard of employer's interest in maintaining its property and maintaining a peaceful workplace. This is disqualifying misconduct.

DECISION:

The August 22, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant is deemed eligible.

Christine A. Louis
Administrative Law Judge
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1000 East Grand Avenue
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Decision Dated and Mailed

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