

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAUREN FURLONG
Claimant

STARBUCKS COFFEE CO
Employer

APPEAL 18A-UI-02861-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/04/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 23, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on March 29, 2018. Claimant participated. Employer participated through store managers Jordan Benike and Brittany Holt and district manager Cody Clites. The employer was represented by Alyce Smolsky of Talx/Equifax.

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 as a full-time barista through February 3, 2018. Her last day of work was February 2, 2018. On February 1 she told a customer over the drive-through headset that she was going to kill them. (Employer's Exhibit 1 p. 1) Other employees (Jessica, Liam, and Jordan) were on headsets and were able to hear the statement. The police were not called. Claimant meant it jokingly because she knew the customer from a prior job and had not seen her in some time. Clites was in the process of investigating an anonymous complaint that claimant was creating a hostile work environment and spoke with her on January 25, 2018. Claimant admitted having thrown something at a wall, dropping whipped cream cannisters because they are heavy, and using profanity at work. His investigation was not completed by February 1. On January 18, 2018, Benike witnessed and warned claimant about having slammed whipped cream cannisters into oven doors and throwing cups at coworkers at multiple times on January 17. Claimant told him she was "stressed out." (Employer's Exhibit 1 p. 2) On November 4, 2017, claimant created a hostile work environment by throwing cups at coworkers. The employer had no detailed record of any statements she was alleged to have made. She received a written warning the same day. (Employer's Exhibit 3) On January 13, 2017, the prior store manager issued her a warning about using profanity in frustration while on the headset on January 12, when customers and coworkers could hear. (Employer's Exhibit 1 p. 4) The employer has an anti-harassment and workplace violence policy, which claimant received.

The policy prohibits “threats of violence” and defines, “A threat of violence prohibited by this policy includes conduct or behavior that reasonably could be interpreted as conveying an intent to engage in violence or to cause injury or harm to a person or property.” It further explains, “The exercise of or attempt to exercise physical force against a partner that causes or could potentially cause physical injury, including . . . throwing an object”. (Employer’s Exhibit 1 p. 5-7)

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 section 96.5(2)a provides:

Causes for disqualification.

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). A warning weighs heavily toward a finding of intentional conduct. Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of his employer. *Myers v. Iowa Dep’t of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985). When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep’t of Job Serv.*, 386 N.W.2d 552, 554 (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. Whether claimant told the customer/former coworker that she would “kill her” or “kick her butt”, the coworkers did not know of the prior acquaintance. Accordingly, claimant’s behavior fell under the employer’s prohibited conduct, as did her earlier history of throwing cups at coworkers. Given that the employer issued multiple written warnings for similar behavior, claimant had reasonable notice her job was in jeopardy, and similar conduct would not be tolerated in the future.

DECISION:

The February 23, 2018, (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 she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs