

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HAPPY HORTON**  
Claimant

**APPEAL NO: 13A-UI-12763-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA CITY COMMUNITY SCHOOL DIST**  
Employer

**OC: 10/20/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 12, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 9, 2013. The claimant participated in the hearing. The employer provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time food service assistant for Iowa City Community School District from August 20, 2007 to October 23, 2013. She was discharged October 23, 2013, for leaving during her shift after an argument with her supervisor regarding her uniform October 21, 2013.

The claimant reported for work in her uniform Monday, October 21, 2013. The claimant's supervisor, Sharon Myers, told her she was not supposed to wear that uniform shirt except on Fridays. The claimant was unaware of that policy and asked who made it and Ms. Myers indicated Allison had done so. The claimant then went to Ms. Myers' office to call Allison's assistant, Cindy Smith, to notify her she was taking a personal day Friday, October 25, 2013. Before she could make the call, however, Ms. Myers came and told her that although she was not trying to "pull rank" on her she would not be disrespected. The claimant asked how she had disrespected Ms. Myers and the conversation degenerated into a heated argument. Eventually the claimant told Ms. Myers she was going to get the hell out of there before she said something "nasty." The claimant went and got her coat, clocked out and stated she would be back the following day. When the claimant reported for work October 22, 2013, she was required to sign a warning about the incident the previous day. On October 23, 2013, Allison asked to meet with the claimant and told her the union representative and human resources would be attending the

meeting with the human resources person's secretary. When all arrived the claimant was notified her employment was terminated for walking off the job and because Ms. Myers had told the employer that during the uniform discussion the claimant said, "Fuck Allison." The claimant denies ever making that comment. The claimant had received a written warning November 30, 2012, for a preplanned absence but did not know her job was in jeopardy.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 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.

871 IAC 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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations.

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law as her argument with Ms. Myers and walking out but stating she would be in the following day was an isolated incident of poor judgment on the part of the claimant. The employer has not met its burden of proof. Therefore, benefits must be allowed.

**DECISION:**

The November 12, 2013, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs