

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THERESA M SCHRODT
Claimant

IMAGINE THE POSSIBILITIES INC
Employer

APPEAL 18A-UI-10221-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/17/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 8, 2018, (reference 03) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on October 26, 2018. Claimant participated. Employer participated through ICFID director Cathy Pringnitz, residential service coordinator/human resource coordinator Katrina Sleharty, and personnel administrator Maggi Mulhausen. Employer's Exhibits 1 through 4 were received. Claimant's Exhibits A and B were received.

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 in July 2018. Claimant last worked as a full-time direct support professional. Claimant was separated from employment on September 19, 2018, when she was terminated.

Employer has standards of conduct that require employees to treat individuals served, co-workers, supervisors, and other associates with care, courtesy, and respect. Claimant was aware of the standards of conduct.

On September 14, 2018, claimant arrived to work at a home providing support to clients. A client named B.J. asked claimant if she would be working with her that night. Claimant stated she did not know as the shift coordinator had not made assignments yet. The shift coordinator arrived and assigned employees to work with specific clients. Claimant stated she wanted to work with a client named Matthew. Ultimately, the shift coordinator assigned claimant to work with B.J. Claimant rolled her eyes when she heard she was assigned to B.J. B.J. was present for the conversation and was upset that claimant did not request to work with her and at claimant's reaction to being assigned to work with her.

The shift coordinator left to work in another house. Claimant, an employee named Judy Weems, and B.J. remained in the home. Claimant began making dinner. B.J. believed claimant was being rough when putting items in the trash and in the sink. B.J. called the on-call supervisor to report that claimant was swearing, yelling, and throwing things. The on-call supervisor contacted another manager, Leah Purcell, who came into the workplace and took claimant's statement. Claimant denied engaging in the conduct. Purcell then suspended claimant pending further investigation.

Employer took statements from other witnesses as part of its investigation. No one other than B.J. reported hearing claimant yelling and using profanity. Weems specifically denied claimant was using profanity.

Based on claimant's past behavior and on B.J.'s statement, employer concluded claimant did use profanity and act rough in the workplace. Employer terminated claimant's employment.

On September 12, 2018, employer gave claimant a written warning for denying a client a bath and repeatedly asking a client to get up off of his living room floor.

On August 24, 2018, claimant was coached on a conflict with a co-worker and negativity in the workplace.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 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).

Employer asserts it terminated claimant's employment for yelling and using profanity and being rough with items when throwing them away during her shift on September 14, 2018. Claimant denies engaging in the conduct, but acknowledges she requested to work with another client in front of B.J. and upset her by doing so. I find claimant's version of events more credible.

The only person alleging claimant committed the conduct is B.J., who did not testify at the hearing. During employer's investigation, claimant's co-workers did not corroborate B.J.'s version of events.

At most, employer established claimant could have been more sensitive when dealing with B.J. Employer did not establish claimant's conduct on September 14, 2018, rose to the level of violating its standards of conduct. Although employer may have had good business reasons for terminating claimant, it failed to establish it terminated claimant for actions that meet the definition of job-related misconduct for purposes of unemployment law.

DECISION:

The October 8, 2018, (reference 03) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn