

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CYNTHIA M MOSTEK**  
Claimant

**APPEAL NO: 14A-UI-06215-DW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 05/11/14**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's June 4, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated at the October 14 hearing in Waterloo, Iowa. Amy Johnson, a divisional director, and Florence Miller. appeared at the hearing. Alyce Smolsky, the employer's representative, participated by phone. During the hearing, Employer Exhibits One, Two and Three were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in April 2012. She worked full time as the employer's activity director. When the claimant began working, she acknowledged that the employer's handbook was made available to her. (Employer Exhibit Three.). The employer's policy informs employees about minor and major violations and the discipline that is associated with the violations. (Employer Exhibit Three.)

On December 14, 2013, the claimant received a verbal counseling for the way she talked to a resident's family member. The employer told the claimant to contact EAP for assistance with communication skills and dealing with difficult individuals. (Employer Exhibit Two.) On January 13, 2014, the employer gave the claimant a documented verbal warning for a minor type C violation. The claimant received this warning for asking an employee questions about the employee's personal life. (Employer Exhibit One.)

The claimant sought treatment for stress and anxiety in March 2014. The clinician who worked with the claimant stated in an October 6 letter that the claimant worked to learn positive coping strategies and communications skills to help her interact positively with co-workers, clients and family members.

The claimant and her staff arranged to have special program for mothers on May 11. Mothers who attended received corsages and residents and their family members enjoyed cake and refreshments. The claimant told a male resident, who did not have a spouse or his mother with him, that he could not attend this event. The resident left and went back to his room. D. a male, who had a family member as a resident, heard the claimant tell the resident that he could not come to this activity. In front of people present, D. questioned the claimant's decision that the resident could not attend this special mother's event. D. said, "That is a bunch of bull that men can't come to this." The claimant and D. have had issues with one another and she felt he had previously threatened her in 2013. The claimant asked him D. not to talk to her that way. The claimant felt D. as harassing her and she told him that if he did not leave her alone, she would call the police. D. then stomped off the claimant then went to her office to contact Diana Roberts, the administrator about the confrontation she had with D..

When she was in her office she was emotionally upset when, another person L., who saw the confrontation came in and tried to comfort her. While L. was in the claimant's office Roberts came and asked him to leave because the claimant and Roberts needed to talk. When the claimant and Roberts were talking with the office door closed, the D.'s wife came into the claimant's office even though she had not been invited. D.'s wife told the clamant that there was something wrong with her. The claimant was still upset and asked Roberts, "How can you allow her to come into my office and ridicule me? You need to back me up and you have not. I can't do this anymore, I quit." Roberts asked D.'s wife to leave and told the claimant she was not leaving or quitting. Roberts indicated the claimant was doing a good job and that she would talk to the family.

After an employee and a family member of a resident made complaints to the corporate office about claimant's conduct on May 11, Johnson investigated. She learned the resident that had been asked to leave was upset that he had been asked to leave. D. and his wife felt the claimant attacked him and did not understand why she had become so upset when he questioned her decision about not allowing a male to attend the activity. They felt the clamant conduct reflected poorly on the employer's customer service.

Even though the claimant's job was not in jeopardy before May 11, Johnson made the decision to discharge the claimant because of her May 11 conduct toward D. and because she would not allow a male resident to attend the May 11 activity. On May 16, Johnson told the claimant that she could either resign immediately or the employer would discharge her. When the claimant declined to sign the resignation form, the employer discharged her.

The claimant established a claim for benefits during the week of May 11, 2014. She has filed claims for the weeks ending May 17 through October 11. She received a gross benefit payment of \$7862 for these weeks. The employer's representative participated at the fact-finding interview.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 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 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's testimony about the conversation she had in her office with Roberts was supported by Miller's testimony. Since the employer did not have anyone with personal information at the hearing to testify about the comments the claimant made to D., the claimant's testimony about what she said must be given more credibility than the employer's reliance on hearsay information from people who did not testify at the hearing. While the claimant's comment that she would contact the police if the male did not stop bothering her may have been unnecessary and inappropriate, the claimant felt that D. was harassing her. His decision to question her decision in front of others was also inappropriate. Since this claimant had issues with this person before she may have been overly sensitive, but the credible evidence does not establish that she screamed and yelled at D. in front of others. They exchanged some words and the claimant became so upset that she went to her office to contact the administrator.

After the employer's corporate office received two complaints about the May 11 incident, Johnson talked to the claimant, D. and his wife, employees and the administrator. She did not talk to L. who was an uninvolved male family member who witnessed the situation and then went to the claimant's office to console her. Based on Johnson's investigation, she concluded the claimant's reaction toward D.'s criticism of her decision violated the employer's code of conduct.

The employer established business reasons for discharging the claimant. Even though the claimant's reaction to D.'s criticism may have been inappropriate, but she did not yell and scream at him. After telling him to leave her alone or she would call the police, she went to her office to contact the administrator. The claimant did not commit work-connected misconduct. As of May 11, 2014, the claimant is qualified to receive benefits.

**DECISION:**

The representative's June 4, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of May 11, 2014, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css