

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHY C BOUTDARA
Claimant

APPEAL NO. 11A-UI-08305-M2

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAVID'S BRIDAL INC
Employer

**OC: 02/13/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 21, 2011, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 28, 2011. Employer participated. Claimant did not participate having failed to present herself until after the hearing had closed, and the other parties had left. She then repeatedly questioned office staff for a lengthy period, left, and then came back.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was discharged on May 10, 2011 for flashing a razor at another employee, yelling obscenities at a supervisor including calling the supervisor a "motherfucker," and refusing to stop the conduct to the point that the police were called.

REASONING AND CONCLUSIONS OF LAW:

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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence establishes that claimant was discharged for an act of misconduct when claimant was discharged for being disruptive and using profanity at work, and refusing to comply with instructions to cease the conduct.

DECISION:

The decision of the representative dated June 21, 2011, reference 02, is affirmed. Unemployment insurance benefits are withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. If this hearing for any reason is to be reset, it should be scheduled for the telephone only.

Stan McElderry
Administrative Law Judge

Decision Dated and Mailed

srm/css