

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FRANCES M HOFFMAN**  
Claimant

**APPEAL NO. 15A-UI-05201-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABCM CORPORATION**  
Employer

**OC: 04/05/15**  
**Claimant: Respondent (2)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct  
Iowa Code Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 22, 2015, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged on April 6, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on June 10, 2015. Claimant Frances Hoffman participated. Attorney Ray Aranza represented the employer and presented testimony through Tiffany Adams, Diana Sterrett and Felicia Morrow. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Four into evidence. Department Exhibit D-1, the fact-finding materials, were received into evidence for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the claimant was overpaid benefits.

Whether the claimant must repay benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Frances Hoffman was employed by ABCM, doing business as Harmony Hose Health Care Center, in Waterloo, as a full-time laundry aide from 1999 until April 6, 2015, when the employer discharged her for violating the employer's policy against violence in the workplace. The policy was contained in a personnel handbook that the employer had provided to Ms. Hoffman.

The incident that triggered the discharge occurred on Saturday, April 4, 2015. On that day, Ms. Hoffman and two other laundry aides were working a weekend shift. The two other laundry aides were Diana Sterrett and Felicia Morrow. Ms. Morrow was just returning to work after dealing with a knee injury. Ms. Hoffman had gone into work that weekend to assist in light of Ms. Morrow's recent knee injury. Ms. Hoffman usually worked alternating weekends and her assigned weekends were usually opposite those worked by Ms. Sterrett and Ms. Morrow. During the morning of April 4, Ms. Sterrett and Ms. Morrow entered into an agreement whereby Ms. Sterrett would deliver clean laundry to residents' rooms so that Ms. Morrow would not have to walk the distance involved. Ms. Hoffman inserted herself into the conversation and issued a directive that Ms. Sterrett would not deliver the clean laundry to the residents. Ms. Hoffman had no supervisory authority over Ms. Sterrett or M. Morrow. Ms. Hoffman asserted that Ms. Morrow's knee would not get better if she did not use it. Ms. Sterrett and Ms. Morrow decided to move forward with their agreement nonetheless. Ms. Hoffman then grabbed the resident room keys from Ms. Sterrett and threw them onto a table. Ms. Hoffman turned to speak to Ms. Morrow and raised her hand aggressive in the direction of Ms. Morrow's face to convey that she should stop speaking and while Ms. Hoffman lectured Ms. Morrow. However, when Ms. Hoffman raised her hand in Ms. Sterrett's direction, her hand made contact with Ms. Sterrett's mouth. In other words, Ms. Hoffman smacked Ms. Sterrett in the mouth. Ms. Morrow saw Ms. Hoffman's hand go up in the direction of Ms. Sterrett, saw Ms. Sterrett's head move backwards, but did not see Ms. Hoffman's hand make contact with Ms. Sterrett's face. A short while later, Ms. Sterrett and Ms. Morrow were eating lunch together when Ms. Sterrett referenced that her mouth hurt because Ms. Hoffman had "bopped" her in the mouth. Ms. Sterrett also reported the incident to the charge nurse on duty, who directed Ms. Sterrett to report the matter to Tiffany Adams, Human Resources Coordinator, on Monday, April 6, 2015. The charge nurse was the only supervisor on duty during the weekend shift.

On the morning of April 6, 2015, Ms. Sterrett reported the incident to Ms. Adams. Ms. Adams took a photograph of the inside of Ms. Sterrett's bottom lip to document a reddened area. Ms. Sterrett has a mole on the inside of her bottom lip, which could be mistaken as a blood blister or other injury. Ms. Adams took a verbal statement from Ms. Sterrett, typed up the statement, and had Ms. Sterrett review and sign the statement. Ms. Adams continued her investigation by contacting Ms. Morrow. Ms. Morrow provided a verbal statement that Ms. Adams typed up. Both Ms. Sterrett and Ms. Morrow told the employer separately that Ms. Hoffman was in the habit of being mean and/or bullying toward Ms. Sterrett.

Ms. Adams concluded her investigation on April 6 by speaking with Ms. Hoffman. Ms. Hoffman denied having struck Ms. Sterrett. Ms. Hoffman told the employer that too much time had passed since the incident for the employer to blame Ms. Hoffman for Ms. Sterrett's reddened lip. Ms. Hoffman asserted that Ms. Sterrett's boyfriend could have caused the mark on the inside of Ms. Sterrett's bottom lip. The employer concluded that the allegation of aggression and violence was credible and discharged Ms. Hoffman from the employment. Ms. Morrow returned to work on April 7, 2015 and signed the written statement Ms. Adams had typed up.

Ms. Hoffman established a claim for benefits that was effective April 5, 2015 and received \$4,812.00 in benefits for the period of April 5, 2015 through June 27, 2015.

On April 21, 2015, a Workforce Development claims deputy held a fact-finding interview to address Ms. Hoffman's separation from the employment. The employer had appropriate notice of the fact-finding interview. Prior to the fact-finding interview, the employer had provided a telephone number where the employer could be reached. The number corresponded to the employer's corporate office. Prior to the fact-finding interview, the employer had provided the

statements signed by Ms. Sterrett and Ms. Morrow. The employer had provided the written reprimand the employer had created in connection with discharging Ms. Hoffman from the employment. The document referenced the policy provision the employer deemed violated and the basis for the discharge. At the time of the fact-finding interview, the claims deputy could not reach the employer at the number provided for the fact-finding interview and left a voicemail message at 10:50 a.m. Between 12:30 and 1:00 p.m., the employer returned the call. The employer played phone tag with the claims deputy that afternoon. The employer resubmitted the materials the employer had previously submitted for the fact-finding interview.

## **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.

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 of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995).

Threats of violence in the workplace constitute misconduct that disqualifies a claimant for benefits. The employer need not wait until the employee acts upon the threat. See Henecke v. Iowa Dept. Of Job Services, 533 N.W.2d 573 (Iowa App. 1995).

An employee who engages in a physical altercation in the workplace, regardless of whether the employee struck the first blow, engages in misconduct where the employee's actions are not in self-defense or the employee failed to retreat from the physical altercation. See Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995).

The weight of the evidence in the record establishes that Ms. Hoffman engaged in aggressive and bullying behavior in the workplace in connection with the final incident and that her aggression resulted in Ms. Sterrett getting smacked and having a reddened lip. There was no justification for Ms. Hoffman's aggressive demeanor or conduct. The conduct in question violated the employer prohibition against violence in the workplace and constituted misconduct in connection with the employment. Accordingly, Ms. Hoffman is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$4,812.00 in benefits for the period of April 5, 2015 through June 27, 2015.

The documentation that the employer submitted for the fact-finding interview was sufficiently detailed to constitute participate in the fact-finding interview. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment. The employer's account will be relieved of liability for benefits, including liability for benefits already paid to the claimant.

**DECISION:**

The April 22, 2015, reference 01, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The claimant was overpaid \$4,812.00 in benefits for the period of April 5, 2015 through June 27, 2015. The claimant must repay the benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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