

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATHLEEN O GRAVEL
Claimant

WINDSTREAM CORPORATION
Employer

APPEAL 16A-UI-05423-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/17/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 3, 2016 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on May 26, 2016. The claimant, Kathleen O. Gravel, participated. The employer, Windstream Corporation, registered a participant for the hearing but subsequently contacted the Appeals Bureau to state it would not participate in the hearing. After the hearing was held, the Appeals Bureau received a copy of a letter documenting the employer's decision not to participate in the hearing. Claimant's Exhibit A was received and admitted into the record without objection.

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 was employed full time as a senior business analyst from December 5, 2004 (when the employer was under previous ownership) until this employment ended on April 12, 2016, when she was discharged for harassing a coworker.

Claimant had a verbal altercation with Diane, a contractor, on March 15, 2016. During this incident, claimant and Diane raised their voices toward one another. Claimant did not use any profanity or threaten Diane in any way. On March 22, claimant received a telephone call from Heather Smith regarding the incident with Diane. During this conversation, claimant asked Smith to do something about Diane, with whom multiple employees and contractors had issues. Claimant contacted Smith again on April 4, to follow up about Diane. Smith said the employer was still reviewing the situation. On April 12, 2016, claimant was discharged. Claimant had no prior warnings for similar conduct. She was not aware her job was in jeopardy at the time she was discharged.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 and (8) 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).

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." Where an employer gives seven days' notice to the employee that it will consider discharging him, the date of that notice is used to measure whether the act complained of is current. *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). An unpublished decision held informally that two calendar weeks or up to ten work days from the final incident to the discharge may be considered a current act. *Milligan v. Emp't Appeal Bd.*, No. 10-2098 (Iowa Ct. App. filed June

15, 2011). Inasmuch as employer had spoken to claimant about the final incident on March 22, and there were no incidents of alleged misconduct thereafter, the employer has likely not established a current or final act of misconduct.

Even if there was a current act of misconduct in this case, the employer has not established disqualifying misconduct. In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

The conduct for which claimant was discharged was merely an isolated incident of poor judgment involving a coworker. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. According to claimant's testimony, it does not appear that claimant's conduct was any more egregious than Diane's, and yet claimant was discharged. Claimant had never been warned for arguing with coworkers before, and nothing about this incident was threatening or wholly inappropriate for a work environment. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The May 3, 2016 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

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