

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA A BETTS
Claimant

APPEAL NO: 13A-UI-12229-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CATHOLIC HEALTH INITIATIVES IOWA
Employer

**OC: 09/29/13
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated October 22, 2013, reference 01, that held the claimant was not discharged for misconduct on October 1, 2013, and benefits are allowed. A telephone hearing was held on November 20, 2013. The claimant participated. Jennie Grandgeorge, HR Generalist, Mona Parekh, Manager, and Teri Reiff, Director, participated for the employer. Claimant Exhibit A was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on July 18, 2012, and last worked for the employer as a full-time CSR on October 1, 2013. The employer has a four-step disciplinary process that can be reduced to three when the first step is for attendance issues. The reasons for discipline need not be related when reaching the final step for termination.

The employer issued claimant a written discipline on April 26, 2012 for having seven unscheduled absences and three incidents of tardiness. The attendance issues covered a period from October 3, 2011 thru April 16, 2012.

The employer issued a written notice with a one-day suspension to claimant on January 2, 2013. She made a statement in the presence of co-workers referring to another employee she doesn't need to be a damn bitch about it. Claimant received the warning and did not grieve it. The warning states claimant could be terminated for a further incident.

Claimant expressed some reluctance to train with a certain co-worker and expressed she did not feel comfortable with the person. The training was learning a new computer procedure.

The employer assigned claimant the training session and with the co-worker for September 20. Claimant made some statements at training that she didn't learn like this and it was pointless in the presence of the co-worker. After the training session claimant made some statements to director Reiff that it did not go well and did not learn from it.

The employer terminated claimant on October 1 for disrespectful behavior to the co-worker and director Reiff during and after the September 20 training session. Claimant submitted a grievance letter to the HR director the next day, but she was not re-instated.

The employer and employer representative did not participate in department fact finding.

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.

871 IAC 24.32(8) provides:

(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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for a current act of misconduct in connection with employment on October 1, 2013. The employer must establish the most recent incident (September 20) is misconduct.

The employer accelerated the four-step disciplinary process because the first matter involved attendance. It should be noted claimant had no further attendance discipline after it (April 26, 2012).

Claimant concedes the profane reference about a co-worker for which she was disciplined and suspended for one day on January 2, 2013.

Claimant allowed her negative attitude toward being assigned training with a co-worker with whom she did not feel comfortable to making some disrespectful comments. The comments were not personal to the co-worker or the director. She participated in the training session and did not disobey the instruction to do so. Balking and argumentative conduct is not considered job disqualifying misconduct.

DECISION:

The department decision dated October 22, 2013, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct on October 1, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs