

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY N LINDSAY
Claimant

APPEAL NO. 13A-UI-06148-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HEARTLAND EMPLOYMENT SERVICES
LLC**
Employer

OC: 04/28/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated May 13, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, an in person hearing was held in Davenport, Iowa, on August 9, 2013. The claimant did not appear for the hearing. The employer participated by Lindsey Howard, RN and the director of care delivery, and Kristin DeKeyser, the human resources director. The record consists of the testimony of Lindsey Howard; the testimony of Kristin DeKeyser; and Employer's Exhibits 1-15.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a long-term skilled care facility known as Manor Care. The facility is located in Davenport, Iowa. The claimant was hired on April 25, 2011, as a full-time CNA. Her last day of work was April 25, 2013. She was terminated on April 29, 2013.

The incident that led to the claimant's termination occurred on April 25, 2013. One of the nurses had asked the claimant to do something and the claimant got quite upset about this. Behind closed doors she told Lindsey Howard, the director of care delivery, and Crystal Yeager, the director of nursing, that "all of you mother fuckers are pissing me off." The claimant was suspended at that point and asked to go home. The claimant tried to argue further with Ms. Howard and Ms. Yeager. She said that she could say whatever she wanted because she was behind closed doors. The employer again asked her to clock out and finally the claimant did so.

The employer has written work rules, of which the claimant was aware, that required employees to use professional, appropriate language and not use foul or offensive words. (Exhibit 11) Violation of the work rule is a Type A violation and leads to termination. The claimant was terminated on April 29, 2013, following an investigation by human resources.

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.

Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Profanity or other offensive language in a confrontational or disrespectful context may constitute misconduct, even in isolated situations or in situations in which the target of the statements is not present to hear them. See Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990). In Henecke v. IDJS, 533 N.W.2d 573 (Iowa App. 1995), the Iowa Court of Appeals stated that an employer has the right to expect decency and civility from its workers. The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The evidence showed that the claimant told members of management that "all you mother fuckers are pissing me off." This is clearly profanity and the words were used in a confrontational and disrespectful context. The claimant did not participate in the hearing and her reason for using language is unknown. The claimant violated a known work rule by using this language. The administrative law judge concludes that the employer has shown disqualifying misconduct. Benefits are denied.

DECISION:

The decision of the representative dated May 13, 2013, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefits amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css