

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOMINIQUE CLARK
Claimant

APPEAL NO: 16A-UI-13711-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC
Employer

OC: 11/27/16
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 14, 2016, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 19, 2017. The claimant participated in the hearing. Greg Holliday, General Manager and Valerie Brennan, General Manager Designate, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time cashier for Pilot Travel Centers from March 22, 2016 to November 30, 2016. She was discharged for assaulting the manager on duty November 26, 2016.

On November 26, 2016, the claimant arrived for her 3:00 p.m. shift around the same time as a few employees scheduled at 2:00 p.m. arrived. The employees scheduled at 2:00 p.m. were late and the Manager on Duty, Valerie Brennan, questioned the tardy employees about why they were late. She did not realize the claimant was not scheduled until 3:00 p.m. and mistakenly asked the claimant why she was tardy. The claimant replied, "Why are you asking me? I'm not supposed to be here until 3:00 p.m." Ms. Brennan asked the other employees why they were late and the claimant interjected herself into the conversation and was "running her mouth" without having a reason to be involved in the conversation. Ms. Brennan was off work at 3:00 p.m. and had gathered her coat and purse and was standing in the restaurant talking to on-coming manager Dawn Jameson. They were having an unrelated conversation when the claimant, who was upset with Ms. Brennan, walked by Ms. Brennan and "checked" her with her shoulder, striking Ms. Brennan's upper body/shoulder area. The claimant had three or four feet available to walk around Ms. Brennan and Ms. Jameson and could have easily walked around them. Ms. Brennan asked the claimant what she said and the claimant stated, "I can clock out and we can go outside" and repeated her comment again. Ms. Brennan excused herself to

diffuse the situation and after she left she contacted General Manager Greg Holliday. Mr. Holliday spoke to the claimant during her next shift and she admitted striking Ms. Brennan with her shoulder because she was upset with her. Mr. Holliday wanted to try to keep the claimant as an employee but needed to consult the corporate office. On November 30, 2016, the corporate office instructed Mr. Holliday that “under no circumstances” could the claimant remain as an employee because the employer had zero tolerance of an assault by an employee against a co-worker or guest and Mr. Holliday notified the claimant her employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from

receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant admitted she could have avoided striking Ms. Brennan with her shoulder but stated she was upset with her. She acknowledges that behavior was inappropriate. Regardless of whether Ms. Brennan mistakenly thought the claimant was tardy and asked her why she was late, that does not give the claimant the right to strike Ms. Brennan.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The December 14, 2016, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs