

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SANDRA MARCONI**  
Claimant

**YWCA CORP**  
Employer

**APPEAL 17A-UI-04278-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/26/17  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 17, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for insubordination. The parties were properly notified of the hearing. A telephone hearing was held on May 25, 2017. The claimant participated and was represented by attorney Megan Norberg. The employer participated through Executive Director Jason Fitzgerald and Health Services Supervisor Carolyn Milburn. Claimant's Exhibits A and B were received into evidence.

**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 part time as a treatment technician from July 22, 2015, until this employment ended on March 27, 2017, when she was discharged.

On March 27, 2017, claimant was called into a meeting with Milburn and her immediate supervisor, Laurie Dixon. The purpose of the meeting was to present claimant with two disciplinary actions. Both were for issues related to unsatisfactory conduct towards her coworkers. The first involved a situation where claimant called a coworker a liar and the second was based on reports that claimant was complaining about her work hours to her coworkers. Claimant disputed the accusations made against her to Dixon and Milburn. Claimant was asked to sign both disciplinary actions, but refused. Refusing to sign a disciplinary action is not grounds for termination under the employer's policies. According to Milburn, when claimant was leaving the meeting she indicated she had recorded the entire thing on her cell phone. Upon hearing this Dixon went to Fitzgerald to report what had happened. The employer has a policy prohibiting the use of video phones on its premises for any purposes other than making phone calls, though it does not specifically prohibit the use of cell phones for the purposes of audio recording. Claimant had no prior warnings regarding this policy.

Fitzgerald entered the meeting room and asked what was going on. Claimant then began to dispute the write-ups with Fitzgerald. Fitzgerald found claimant's tone of voice and body

language during the conversation to be argumentative. Fitzgerald then told claimant he did not think her employment was working out and she was being terminated. Other than refusing to sign the written warnings, which the employer testified claimant was allowed to do, there were no other directives she was given and refused to follow prior to being terminated.

### **REASONING AND CONCLUSIONS OF LAW:**

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

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Here, it appears claimant was discharged due to a personality conflict with members of management. Fitzgerald indicated claimant was argumentative, but when pressed to describe what he meant by that he gave general answers such as her body language and tone of voice. When asked for specific examples of why he believed she was argumentative Fitzgerald pointed to the fact that claimant disputed her written warnings and refused to sign them. Fitzgerald also testified, however, that employees are allowed to do this under their policies. When asked if there were any specific directives claimant was given and refused to follow, other than signing the written warnings, it was reported that there were none. Having a personality conflict with management, by itself, is not misconduct. The employer has failed to meet its burden by identifying any intentional misconduct for which claimant was discharged.

In the event that the employer was arguing claimant was discharged for allegedly recording her meeting with Dixon and Milburn, it has also failed to meet its burden. 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. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. None of claimant's prior warnings involved allegations of video or audio recordings. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it 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 April 17, 2017, (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.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs