

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAREN A DRAYTON**  
Claimant

**APPEAL NO: 11A-UI-01384-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FOUNTAIN WEST HEALTH CENTER INC**  
Employer

**OC: 01/02/11  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's January 27, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Stacey Hemmingway-Perry, the human resource manager, appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in August 2009. The claimant was hired as a part time employee, but became a full time cook in November 2009.

Prior to her employment separation, the claimant had been reporting continuing problems she had with a co-worker, L.G. Although the claimant and L.G. had once been friends, an incident occurred that broke up their friendship and the two no longer liked one another.

When the claimant went into the dining are to help serve residents breakfast the morning of December 26, L.G. asked the claimant a question about a resident's diet. While they were at the steam table, the claimant told L.G. she needed to have the dietary sheet for residents with her because diets could change from day to day. The claimant and L.G. then taunted one another with snide comments. (Employer Exhibit One.) They were not talking in raised voices and a cook who was on the other side of the steam table, two to three feet away, did not hear what they said. After the claimant walked away and went back to the kitchen, L.G. kept walking past her with a smirk on her face. The claimant told a co-worker that if L.G. kept messing with her, she would knock off her glasses. The claimant did not say anything to L.G. after the claimant left the steam table.

Shortly after the claimant made the comment to a co-worker, she contacted her supervisor and reported the problems she had with L.G. that morning. After the claimant reported these additional problems with L.G., the employer had both women write a statement about what happened the morning of December 26. The employer concluded that the claimant and L.G. violated the employer's policy about fighting with a co-worker at work and discharged both of them on December 29, 2010. The claimant's job was not in jeopardy before December 26 and she was discharged solely because of the December 26 verbal exchange she had with L.G.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. The evidence, however, indicates the claimant had been reporting problems with L.G. for awhile. Anything the supervisor had done had not been effective or had not resolved the problem. Even though the employer asserted residents and co-workers complained about the claimant's and L.G.'s verbal exchange at the steam table, the facts do not support this assertion. The facts instead suggest the claimant's report about problems she had with L.G. that morning prompted the employer's investigation. The claimant used poor judgment when she expressed frustration with L.G. to a co-worker. It is understandable why the claimant was frustrated when the problems between the claimant and L.G. continued at work.

The snide comments the claimant and L.G. made at the steam table do not rise to the level of work-connected misconduct. They both made inappropriate comments, but their verbal taunts do not amount to work-connected misconduct. The evidence does not establish that anyone overheard these comments. Since the evidence does not establish that the claimant committed work-connected misconduct, she is qualified to receive benefits as of January 2, 2011.

**DECISION:**

The representative's January 27, 2011 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but these reasons do not amount to work-connected misconduct. As of January 2, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs