

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANNE E CURTIS
Claimant

APPEAL NO. 14A-UI-03380-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESLEYLIFE
Employer

OC: 03/02/14
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 March 24, 2014, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on April 21, 2014, by telephone conference call. The claimant participated personally. Employer participated by Maria Jordan, Director of Adult Aide Services; Betty Stone, Director of People and Culture; and Linda LaMont, Nurse. Mark Bickers represented the employer.

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 provides health and human resource services. One of the services it provides is adult day care. The claimant was hired on October 27, 2006, as a home health care aide. She later became a life enrichment partner and worked in the adult day care center. She was a full-time employee. Her last day of work was March 6, 2014. She was terminated on March 6, 2014.

The incident that led to the claimant's termination occurred on March 3, 2014. The claimant was scheduled to be at work at 12:00 p.m. She did not arrive until 12:30 p.m. The claimant was informed by Linda LaMont that this would count as an unexcused absence. The claimant became very upset. She slammed the door to Ms. LaMont's office and threw her water bottle. She screamed profanities and got into Ms. LaMont's face. She could be heard by other employees and residents. The employer considered the claimant's actions a violation of its work rules concerning a respectful and safe work environment. The employer's work rules prohibit threatening acts and violence, fear and intimidation. It is a zero-tolerance policy.

The claimant had had numerous write ups during the years she worked for the employer. In July 2009, the claimant was asked to participate in an EAP program due to her performance patterns and issues. She received written warning concerning her attendance. When she was given a written warning on November 1, 2012, she slammed her cell phone on the desk. She was given a warning on disrespectful conduct on June 11, 2012.

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 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 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 engaged in conduct on March 3, 2014, that violated her duty of civility and geniality. The claimant got angry because she was told that her tardiness would be counted as an unexcused absence. She screamed; used profanity; and threw her water bottle. Not only did Ms. LaMont feel threatened but she testified that other employees and residents in the area

could hear what the claimant was saying and doing. The claimant had had prior warnings for attitude and disrespectful conduct. The administrative law judge concludes that there was a pattern of behavior that shows problems with attitude and disrespect. The employer has established misconduct. Benefits are denied.

DECISION:

The decision of the representative dated March 24, 2014, 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

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