

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROSHELLE D CAPLES**  
Claimant

**APPEAL NO. 10A-UI-07789-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LUTHERAN SERVICES IN IOWA INC**  
Employer

**OC: 04/25/10**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 21, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on September 7, 2010. Claimant participated and was represented by Kate Mitchell, Attorney at Law. Employer participated through Director of Home Health Care Services Julie Adair and Immediate Supervisor Vicky Bienemann and was represented by Tara Hall, Attorney at Law. Employer's Exhibit 1 (pages LS-1 through LS-19) was admitted to the record. Claimant's Exhibits A and B were admitted to the record.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a home health aide from March 4, 2008 and was separated from employment on April 30, 2010. After claimant had asked to change her part-time status and employer agreed, the May schedule was posted on April 28. Claimant believed the status change should not require her to work weekends any longer, so she told Adair she did not like the weekend schedule and Adair told her that the weekend schedule applies to everyone and would call her later in the day because she had an appointment. She had worked every other weekend since her hire. When Bienemann passed on the message to claimant later that day that Adair was still in meetings and would call her later, claimant responded, "I will take care of myself. You want me to quit but I'm not going to quit. You will have to fire me because I'm not quitting. I'm not kissing anybody's ass including yours." The statement was made in front of two nurses and a receptionist. Adair made the decision to discharge claimant.

## 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.

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.

"The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. EAB*, 462 N.W.2d 734 (Iowa App. 1990).

Claimant acknowledged making a similar statement to Bienemann, using the word "butt" rather than "ass." Her verbally abusive language and conduct towards Bienemann in front of coworkers was misconduct sufficient to warrant a denial of benefits.

**DECISION:**

The May 21, 2010 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw