

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SANDRA BOWDEN

Claimant

APPEAL NO. 14A-UI-02084-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

OC: 01/26/14

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Good Samaritan Society, Inc. (employer) appealed an unemployment insurance decision dated February 13, 2014, (reference 01), which held that Sandra Bowden (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 17, 2014. The claimant participated in the hearing with Attorney Steven Stickle. The employer participated through Michella Sybesma, Executive Manager; K.D. Kalber, Director of Human Resources; Nikki Kintz, Services at Home Manager; and Tiffany Tracy, Care Coordinator. Employer's Exhibits One through Three were admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer acquired Guardian Family Care, Inc. on December 1, 2013. The primary office is in Bettendorf with satellite/field offices in Muscatine and Clinton, Iowa and Moline and Geneseo, Illinois. The claimant worked for the previous owner for 14 years and began employment with the employer in the Bettendorf field office on December 1, 2013, as a full-time marketing and operations manager. She was discharged on January 28, 2014, for her behavior on January 23, 2014, which was determined to be a Group III Offense of indecent and obscene conduct. No previous warnings were issued.

On January 23, 2014, the claimant arrived at the field office in Muscatine where she entered Manager Nikki Kintz's office while Ms. Kintz and Care Coordinator Tiffany Tracy were participating in a management conference call. The claimant was not invited to be a participant in the conference call and she was upset about that fact. She "silently invited herself into the call, and began to make rude/obscene gestures as call participants were speaking." The claimant made a gesture with her middle finger and said, "Liar, liar, liar!" The employer determined that such behavior would not be tolerated by a member of management.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged her for reasons constituting work-connected misconduct. Iowa Code § 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 employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). 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. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant was discharged on January 28, 2014, for insubordination. Her actions on January 23, 2014, were inappropriate and unacceptable, and the employer had sufficient justification to warrant termination. However, the employer had not previously warned the claimant about any of the issues leading to the separation. 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. Consequently, the employer 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. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The unemployment insurance decision dated February 13, 2014, (reference 01), is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs