

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEPHANIE DIPASQUALE**

Claimant

**APPEAL NO: 15A-UI-13460-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EGS CUSTOMER CARE INC**

Employer

**OC: 11/01/15**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 1, 2015, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 6, 2016. The claimant participated in the hearing. Turkessa Newsome, Human Resources Generalist; Sonia Johnson, Human Resources Manager; and Liz Somes, Trainer; participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer service representative for EGS Customer Care from December 1, 2014 to November 4, 2015. She was discharged for using profanity in the workplace.

On October 23, 2015, the claimant was overheard in the common hallway where the lockers are contained saying, "I am going fucking crazy in this bitch," after a new hire asked if she was in the claimant's way. The new hires had exited the training room just off the hallway and there were several people in front of the lockers which frustrated the claimant. The claimant was also upset because she thought she was working on her day off for another employee but when she arrived the other employee was working too. After getting in her locker the claimant stopped by human resources to complain about the new hires and then spoke with Trainer Liz Somes outside in a break area, asking her to go over locker etiquette with the new hires. Ms. Somes could see the claimant was visibly upset about the situation. When Ms. Somes returned to the training room three new hires asked what they should do if someone swore at them and stated they felt threatened by the claimant's words.

When the claimant reported for work October 24, 2015, she was pulled from the floor and sent home on leave while the employer investigated the incident. The employer testified any use of the f-word anywhere on the premises will result in immediate termination. That policy is not contained in its handbook, however, and Ms. Somes stated that during training she tells new hires that any unprofessional language will result in corrective action. She does not tell new employees that if they use the f-word, outside the call center floor, they will be terminated immediately.

After reviewing the video and taking statements from the employees involved, the employer notified the claimant her employment was terminated November 4, 2015. She had not received any previous warnings for inappropriate or unprofessional language in the past.

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

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

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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).

While the claimant did use inappropriate language in the common hallway where the lockers are located October 23, 2015, there was nothing threatening about her statement. The new hires may have been offended or even slightly intimidated by the claimant but the statement does not contain any threatening language. Additionally, although the employer maintains the claimant was trained that any use of the f-word anywhere on the employer's premises will result in immediate termination, that policy is not contained in the employer's handbook and Ms. Somes, who trained the claimant, testified she does not teach that in her training classes. She does instruct new hires that use of unprofessional language outside the call center part of the building will result in a corrective action. The use of the f-word on the call center floor will result in termination and that is a common sense policy. However, given that the claimant was not on the call center floor and had never been told that use of the f-word anywhere on the employer's premises would result in immediate termination her actions cannot fairly be characterized as intentional, disqualifying job misconduct.

While the claimant should not have used profanity in the common hallway in front of the new hires, at worst this was an isolated incident of poor judgment and does not rise to the level of disqualifying job misconduct. The employer has not met its burden of proof. Therefore, benefits must be allowed.

**DECISION:**

The December 1, 2015, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs