

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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CARE INITIATIVES
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Appeal Number: 05A-UI-01938-LT
OC: 01-16-05 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the February 16, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 10, 2005. Claimant did participate during Chidester's testimony but hung up and disconnected herself from the hearing. The administrative law judge attempted to connect claimant to the hearing again but she did not pick up her phone after two minutes of rings. As of the close of business hours on March 10 when the administrative law judge had not heard from claimant, the record was closed. Employer did participate through Susan Chidester and was represented by Lynn Corbeil of Johnson & Associates. Allison McGrand and Della Wallag were also available as witnesses but did not testify after claimant removed herself from the hearing.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time dietary supervisor through January 20, 2005 when she was discharged. Della Wallag and Allison McGrand overheard claimant use obscenities (including the "F-word" according to statements given to Chidester) in the presence of residents. When Susan Chidester, Administrator, confronted her about her language, claimant threw her keys at Chidester and left. Claimant signed and acknowledged that she had received the employer policy governing inappropriate language, among other issues. Chidester had warned claimant in November 2004 about her inappropriate language towards an employee.

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 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

“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).

Inasmuch as claimant elected not to participate further in the hearing and offer rebuttal, employer's evidence is considered credible. Claimant's repeated use of foul language towards employees and in front of residents after having been repeatedly warned constitutes misconduct. While claimant may have thought she had “good reason” to be upset, a reasonable person conducts themselves civilly without the use of obscene language or name-calling when expressing disagreement. Benefits are denied.

DECISION:

The February 16, 2005, 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.

dml/kjf