

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TIASIA M MERRETT**  
Claimant

**SEARS ROEBUCK & CO**  
Employer

**APPEAL 15A-UI-06671-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/10/15**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 9, 2015, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 7, 2015. Claimant participated. Employer participated through human resources manager, Sarah Frost. Employer exhibits 1 through 4 were admitted into evidence with no objection. Employer Exhibit 5 was admitted into evidence over the claimant's objection.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a water heater sales and service representative from June 13, 2014, and was separated from employment on May 15, 2015, when she was discharged.

On May 14, 2015, the employer received a complaint from an employee regarding claimant making fun of her. The employee also felt threatened by claimant. Ms. Frost and claimant's direct supervisor, Marsha Bailey, conducted an investigation. They interviewed other employees and then asked claimant to come into the office. Claimant started laughing during the meeting with Ms. Frost and Ms. Bailey. Claimant told them that no one could tell her what to do. Claimant left the office before the meeting was concluded. Ms. Bailey had to go ask claimant to return to the office. When claimant returned, she continued to laugh and mutter profanity. Ms. Bailey and Ms. Frost decided to suspend claimant for the rest of the work day to finish the investigation and because of claimant's inappropriate comments. Claimant asked them if she was being fired. They told claimant that she was not being fired at that time. It is company policy to walk any suspended employee out of the office. Ms. Bailey and Ms. Frost walked claimant out of the building for her to leave. During this walk, claimant yelled, in front of other employees, "f@#\$ this place", "f@#\$ this job". Claimant also said to Ms. Bailey, "bitch, why are you f@#\$ing following me?" As claimant was leaving the building, claimant stated "you tell that bitch I will be waiting for her when she gets off at nine o'clock tonight" regarding the

employee that made the complaint. Claimant also called Ms. Bailey and Ms. Frost “stupid bitches”. The employer was concerned about the threat and escorted the threatened employee out of the building that night.

The employer has a workplace violence policy that includes termination as a possible consequence. Claimant believed that the employer had a policy about workplace violence and would expect termination to be an option if there was violence or a threat of violence.

### **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. Benefits are denied.

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).

Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). “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. Emp't*

*Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Claimant's yelling of the word "f@#\$" in front of other employees while she is being escorted out by her direct supervisor and calling her direct supervisor and Ms. Frost "stupid bitches" is misconduct. The employer had a specific policy prohibiting claimant's conduct. The employer has presented substantial and credible evidence that claimant made a threat of violence about a coworker after the coworker made a complaint about the claimant. The employer has a duty to protect the safety of its employees. Claimant's threat of harm was contrary to the best interests of the employer and the safety of his coworker.

While the employer did not present Ms. Bailey to provide sworn testimony or submit to cross-examination, the combination of Ms. Bailey's written statement and Ms. Frost's testimony, when compared to claimant's recollection of the event, establish the employer's evidence as credible. Claimant's threat and use of profanity is considered disqualifying misconduct, even without prior warning. Benefits are denied.

**DECISION:**

The June 9, 2015, (reference 02) unemployment insurance 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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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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