

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA RADEMACHER
Claimant

APPEAL NO: 09A-UI-16813-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLEN MEMORIAL HOSPITAL
Employer

**OC: 10/11/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated October 27, 2009, reference 0, that held she was discharged for misconduct on October 9, 2009, and benefits are denied. A telephone hearing was held on December 14, 2009. The claimant submitted a written statement. Abby Meester, HR Assistant; Tamie Cole, Distribution MGR; and Kari Beschorner, Logistics Director, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began full-time employment on September 19, 2000, and last worked as a receiving technician for the employer on October 9, 2009. The employer policy prohibits the use of profanity at the workplace.

The employer issued first level warnings to the claimant for the use of profanity at work in 2004 and 2008. The claimant was issued first and second level warnings for job performance issues in 2009. The claimant was issued a third level warning and one-day suspension on September 16, 2009 for use of profanity at work. The claimant was put on notice a further policy violation would result in termination.

A co-worker and vendor reported to Manager Cole on October 6 that claimant starting swearing and using profanity at the dock. The claimant was confronted by the employer and she admitted doing so. The employer discharged the claimant on October 9 for the most recent incident in light of prior warnings.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on October 9, 2009, for repeated violations of company policy by using profanity at the workplace.

The claimant knew the employer policy due to a prior warning and suspension, and her repeated violation for the same offense constitutes job disqualifying misconduct.

DECISION:

The department decision dated October 27, 2009, reference 01, is affirmed. The claimant was discharged for misconduct on October 9, 2009. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css