

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAURA S HAPPS
Claimant

COMMUNITY HEALTH CENTERS OF SOUT
Employer

APPEAL 19A-UI-04144-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/14/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 9, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on June 14, 2019. Claimant participated. Claimant's husband observed. Employer participated through director of human resources Diane Roelfs, clinic site manager Melanie Kelly, and CEO Ron Kemp.

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 began working for employer on April 26, 2015. Claimant last worked as a full-time LPN support nurse. Claimant was separated from employment on April 19, 2019, when she was terminated.

Employer has rules of conduct that prohibit use of abusive or offensive language, behavior that interferes with operations that is offensive to visitors or employees, and disorderly conduct. Claimant was aware of the rules of conduct.

On April 5, 2019, claimant was working with a co-worker named Tatia Davis. Davis asked claimant a question from her desk, which was about 20 feet away. The question had to do with training. Claimant rose from her desk and quickly approached Davis. Claimant hovered over Davis at her desk and raised her voice and used the word "fuck" repeatedly. Davis asked claimant to calm down. Two other employees overheard the incident. One employee, Annie, entered the room and told claimant she needed to calm down.

The incident was reported to management. Clinic site manager Melanie Kelly met with claimant, who was still very upset. Kelly sent claimant home for the day.

Kelly investigated the incident by taking witness statements. Davis and the two other co-workers provided the same version of events.

Employer terminated claimant on April 19, 2019.

On December 27, 2016, claimant was counseled after hitting a wall in the clinic when she was upset.

On October 11, 2017, claimant was given a written warning after becoming upset and making derogatory statements about a patient.

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 § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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. Iowa Dep't of Job Serv., 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, employer established claimant behaved in a disorderly manner and used abusive and offensive language to a co-worker after being warned that similar conduct could result in termination. Although claimant asserts the dispute was two-sided and denies using profanity, I find employer's version of events more credible, especially in light of claimant's history of behaving inappropriately in the workplace when upset.

DECISION:

The May 9, 2019, (reference 01) 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.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn