

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JOHANNA D VAN GORP**  
Claimant

**CRYSTAL INC**  
Employer

**APPEAL 15A-UI-13302-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/01/15**  
**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 November 24, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on December 21, 2015. The claimant participated personally. The employer participated through Dianne Panzi, Administrator. Claimant Exhibit A and Employer Exhibits 1 through 4 were admitted into evidence.

**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: The claimant was employed full time as a certified nursing assistant and was separated from employment on November 24, 2015, when she was discharged (Employer Exhibit 1).

The employer provides services to dependent adults in a residential setting. The claimant was discharged for incidents related to her October 30, 2015 shift when she was observed making inappropriate comments in the presence of residents including calling a resident a bitch, stating a resident was “yelling and bothering everyone,” declaring a resident smelled of yeast, and stating she wanted to bash her fucking head. The claimant was also observed using her cell phone in a resident’s room and bathroom, in violation of the employer’s policies. The claimant admitted to using profanity in a resident’s room (Claimant Exhibit A), and she was subsequently suspended and discharged.

The employer asserted the claimant’s conduct on October 30, 2015 warranted immediate discharge without prior warning. The employer has written policies regarding prohibition of cell phone use on the work floors (Employer Exhibit 2-A) and the claimant acknowledged receipt of company policies (Employer Exhibit 2) at the time of hire. Part of the claimant’s training included adult dependent abuse and reporting possible abuse (Employer Exhibit 4). Derogatory and inappropriate language can be considered abuse per the employer’s policies.

## 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:

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.

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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. Arndt v. City of LeClaire, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. State v. Holtz, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer has satisfied its burden of proof to establish the claimant was discharged for disqualifying misconduct.

“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). By the claimant’s own admission, she used profanity at and around residents, for which she was responsible for providing care. In addition, the claimant violated the employer’s policies by accessing her cell phone while in residents rooms, and on the clock. The claimant knew or should have known her conduct was in disregard of the employer’s interests and reasonable standards of behavior that the employer has a right to expect of its employees. The claimant’s conduct is considered disqualifying misconduct, even without prior warning. Benefits are denied.

**DECISION:**

The November 24, 2015, (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.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

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