

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREA R MURRAY
Claimant

CENTRAL IOWA HOSPITAL CORP
Employer

APPEAL 16A-UI-07516-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/12/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 1, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for conduct not in the best interest of her employer. The parties were properly notified of the hearing. A telephone hearing was held on July 27, 2016. The claimant, Andrea R. Murray, participated. The employer, Central Iowa Hospital Corporation, participated through Barb Owca, human resources business partner. Claimant's Exhibit A and Employer's Exhibit 1 were received and admitted into the record without 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 with the employer beginning July 1, 1997. Most recently, claimant held a secretary position in the Penn Occupational Health Clinic. The City of Des Moines, including the Des Moines Police Department, is a client of the Penn Occupational Health Clinic.

On June 12, 2016, claimant was arrested in the Iowa Lutheran Hospital parking lot for operating a vehicle while intoxicated (OWI). Claimant denies that she was intoxicated at this time. She recalls having a conversation with the police officer in which she said that she had worked for Methodist Hospital for nineteen years. She recalls the police officer replying that she would not be working there any longer. Claimant does not have any other memories of the conversation. The employer provided a copy of the Notice of Corrective Action given to claimant at her discharge meeting on June 16, 2016. (Exhibit 1) This document states in pertinent part:

The arresting officer reported the below account of Andrea's threatening behavior and verbiage towards officer during her arrest on June 12, 2016 for OWI.

'As I conducted my investigation into her impairment Murray became increasingly agitated and began to direct threats at me and any officers who may need to visit

the [clinic where claimant worked] for a work related injury. Murray expressed the desire that I and other officers be hot and then she would do what she could to impede our treatment at the [clinic]. Murray also made threats of personal harm towards me several times.'

During the meeting on June 16, claimant denied making the threats and refused to talk about the events that transpired on June 12. The employer discharged claimant for representing herself as an employee of its organization and stating she would block or impede treatment of a patient.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying job-related misconduct. Benefits are withheld.

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).

Under the definition of misconduct for purposes of unemployment benefit disqualification, the conduct in question must be "work-connected." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991). The court has concluded that some off-duty conduct can have the

requisite element of work connection. *Kleidosty v. Emp't Appeal Bd.*, 482 N.W.2d 416, 418 (Iowa 1992). Under similar definitions of misconduct, for an employer to show that the employee's off-duty activities rise to the level of misconduct in connection with the employment, the employer must show by a preponderance of the evidence that the employee's conduct (1) had some nexus with the work; (2) resulted in some harm to the employer's interest, and (3) was conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer's interest would suffer. See also, *Dray v. Director*, 930 S.W.2d 390 (Ark. Ct. App. 1996); *In re Kotrba*, 418 N.W.2d 313 (SD 1988), quoting *Nelson v. Dept of Emp't Security*, 655 P.2d 242 (WA 1982); 76 Am. Jur. 2d, Unemployment Compensation §§ 77-78.

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 provided more credible testimony than claimant. While claimant denies making threats to the officer on June 12, she testified that she did not remember much of the conversation she had with him. In contrast, the employer provided firsthand testimony from Owca, who was in the discharge meeting, as well as the documentation that included a statement from the officer who claimant threatened. The administrative law judge believes claimant threatened the officer during the June 12 conversation and arrest.

Here, claimant's conduct developed a nexus to her work when she informed the officer that she was an employee of the Penn Occupational Health Clinic, where he and his fellow officers received medical treatment. Claimant harmed her employer's relationship with the Des Moines Police Department when she threatened to impede the medical treatment of police officers who visited the clinic for treatment. Claimant's threats undoubtedly violated the employer's expectation that she help patients and assist in their treatment, rather than interfering with their treatment. Any reasonable person in that circumstance would know that threatening the police officer would cause her employer's interest would suffer. Claimant's statement to the officer was unambiguously hostile and threatening.

The employer has presented credible evidence that claimant threatened a police officer while representing herself as an employee of the clinic where the officer receives medical treatment. Claimant's conduct amounts to disqualifying misconduct even without prior warning. Benefits are withheld.

DECISION:

The July 1, 2016, (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.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

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