

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIASHA MORTON

Claimant

THE METH-WICK COMMUNITY INC

Employer

APPEAL NO: 12A-UI-02453-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/29/12

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 March 5, 2012 reference 01 that held she was discharged for misconduct on January 30, 2012, and benefits are denied. A telephone hearing was held on March 28, 2012. The claimant participated. Barb Tepley, HR Director, Michelle Otten, D.O.N., Kelly Van Winkle, Asst. D.O.N., and Ricki Ironside, LPN, participated for the employer. Claimant Exhibits A, B & C, and Employer Exhibit One was received as evidence.

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 witnesses, and having considered the evidence in the record, finds: The claimant began employment as a part-time C.N.A. job on August 3, 2010, and last worked for the employer on January 30, 2012. The claimant received an employee handbook that contained the policies of the employer. The policy provides that an employee is subject to disciplinary action for harassment, to wit: threatening, intimidating, coercing, or interfering with employees or supervisor.

The employer issued a written warning to claimant that she received on April 7, 2011 for insubordination and inappropriate behavior. The employer cited claimant for being rude to a charge nurse and agency nurse. She failed to follow instructions from the charge nurse. She was put on notice that any further discipline could result in termination.

The employer issued a written warning to claimant that she received on January 24, 2012 for bringing her 12-year-old son to work on January 14/15, and using the employer laundry for personal use. She was put on notice that a further instance of inappropriate behavior could result in employment termination.

When LPN Ironside, a co-worker, was leaving work on January 24 she received a number of text messages from the claimant. The messages referred to the co-worker as having “narced” about claimant bringing her son to work, telling her to watch her back, and referring to her as a bitch”. Similar messaging was sent by claimant to co-worker Lisa. They reported the incident to the employer.

On January 30, the employer confronted claimant with the text messaging to co-workers, and discharged her for threatening and intimidating behavior in light of prior discipline. Claimant denies she intended to threaten the co-workers but admitted in this hearing she was questioning them about the recent warning she got for bringing her son to work.

REASONING AND CONCLUSIONS OF LAW:

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.

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 January 30, 2012, for repeated violations of company policy.

The claimant had no business in confronting co-workers about the employer disciplining her for bringing her son to work. The mere fact of text messaging them without regard to the content is intimidation and a violation of the employer policy.

The claimant knew the employer policy due to prior warnings and her repeated violation for inappropriate behavior constitutes job disqualifying misconduct.

DECISION:

The department decision dated March 5, 2012, reference 01, is affirmed. The claimant was discharged for misconduct on January 30, 2012. 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/pjs