

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANE FISHER
Claimant

APPEAL NO: 09A-UI-17816-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAITH LUTHERAN HOME CORP
Employer

OC: 11/01/09
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Jane Fisher (claimant) appealed an unemployment insurance decision dated November 20, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Faith Lutheran Home Corporation (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Mason City, Iowa on February 12, 2010. The claimant participated in the hearing with friend Pat Schotanus in attendance. The employer participated through LaDonna Gunderson, Administrator. Employer's Exhibits One through Four and Claimant's Exhibits A and B were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 23, 2006 as a part-time environmental aide but soon became employed full time in housekeeping and laundry. She was discharged on October 28, 2009 for disruptive behavior and obscene and/or abusive language. The claimant was upset that morning about a change in hours and she went to speak with Administrator LaDonna Gunderson about it. Nothing was really resolved but the claimant went about her day and later attended a housekeeping meeting. She became argumentative with her supervisor, Terry Giestler, and he eventually cancelled the meeting because of her disruption. Mr. Giestler went to Ms. Gunderson's office to report the claimant's conduct. Ms. Gunderson called the claimant into the office and tried to speak with her about her conduct. The claimant was emotionally upset and would not listen to reason. Finally, she left Ms. Gunderson's office and slammed the door; she said she was just going to leave and Ms. Gunderson told her not to return. Ms. Gunderson followed the claimant and threatened to call the police. The employer was later told by co-employees that the claimant was going through the hall saying, "fuck" but

the claimant denies saying this word. The employer presented one previous disciplinary warning dated September 4, 2009 for "loitering or loafing" during work hours.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 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. IDJS, 364 N.W.2d 262 (Iowa 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. IDJS, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351

N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

The employer discharged the claimant on October 28, 2009 because the claimant was “verbal and disruptive.” The evidence is clear that the claimant was upset that day but it is not entirely clear what she was upset about. The claimant denied using profanity and the administrator never heard the claimant use profanity. The claimant’s conduct may have been unacceptable but there is no evidence the employer had previously warned the claimant about this issue prior to the separation. Consequently, the employer is unable to establish that the claimant acted deliberately in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are therefore allowed.

DECISION:

The unemployment insurance decision dated November 20, 2009, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css