

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**PENNI R CHESMORE**  
Claimant

**SIOUXLAND MENTAL HEALTH SERVICE**  
Employer

**APPEAL NO. 17A-UI-06932-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/04/17**  
**Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 30, 2017, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 26, 2017. Claimant participated personally and had witnesses Charles Tilly, Shane Walters and Juan Gonzalez. Employer participated through Jill Knuth. Claimant's Exhibits A-E and Employer's Exhibits 1-5 were admitted.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 5, 2017. Employer discharged claimant on June 5, 2017 because claimant allegedly displayed a lack of leadership and crossed professional boundaries with sexual conversations in front of coworkers.

Employer testified solely through its human resources director. Said director did not directly witness any of the alleged actions on the part of the claimant, but did collect testimonies from multiple coworkers of claimant. Said testimonies were forwarded to the court in the form of exhibits. Those written statements told of claimant speaking about the size of her husband's endowment, and claimant's preference for certain types of sex. Employer did not have anyone who was an actual participant in the conversations testify, choosing instead to have written testimonies of those who overheard conversations, but were not directly involved in the conversations. Employer also included a written testimony of a woman who wrote that claimant commented that her ultrasound photo of her unborn child showed that child to have a large penis. Claimant also denied making this statement.

These alleged discussions took place over a month before claimant's termination. Employer stated that coworkers were afraid to come forward to claimant's bosses or to human resources to complain because they were concerned about retribution from claimant.

Employer's other argument against claimant was that she displayed a lack of leadership. Employer's evidence of this was that claimant spent too much time on the marketing and purchasing of materials, and not enough time learning the intake procedures. Claimant provided witnesses who stated that claimant did do intake and that claimant was assigned to improve marketing for the facility where she worked and did positive work toward improving that marketing.

Claimant received no warnings prior to her termination.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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 disqualification shall continue 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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. 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. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The allegations of employer – especially that of the crude conversations claimant had concerning sex and her husband – had no place in a work environment and can reasonably be seen as misconduct, depending on the surrounding facts and circumstances. Whereas written documents may tell of acts that the person believed happened, only through testimony can the document be augmented in such a way that the finder of fact can truly understand whether claimant was simply speaking the same way as her coworkers in a private discussion or whether claimant was entirely out-of-line with her statements. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Here, employer did not have any of the people to whom claimant was allegedly speaking when making the offensive comments, nor did employer bring anyone who allegedly overheard the comments. The employer left the administrative law judge to rely only upon the written papers of two people who do not give full context to their writings. Claimant denied making the comments at all, and employer could not provide context to the alleged statements. The administrative law judge was left without information regarding the discussions themselves, and as such, the administrative law judge will infer that the witnesses did not testify (and that the employer did not request a continuance of the hearing to allow witnesses to testify) because of deficiencies in the peoples' testimonies.

Regarding the allegation that claimant did not display proper leadership and did not learn procedures in a timely manner, claimant effectively blunted both of those arguments through her

testimony and her witnesses. Claimant and witnesses testified that claimant did fill out intake reports – effectively negating employer’s comments that she hadn’t learned this task. Claimant also provided witnesses stating that one of her duties was to market employer’s business. This countered employer’s argument that claimant wasn’t doing her job.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer’s policy concerning inappropriate conduct and a failure of leadership. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because employer did not carry its burden of proof to prove misconduct. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated June 30, 2017, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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