

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

COLLEEN R HOGAN
Claimant

APPEAL NO. 20A-UI-11207-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALPINE GLASS INC
Employer

OC: 07/19/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Colleen Hogan filed a timely appeal from the September 2, 2020, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Hogan was discharged on July 16, 2020 for conduct not in the best interests of the employer. After due notice was issued, a hearing was held on November 3, 2020. Ms. Hogan participated and presented additional testimony through Jonathan Hogan Brandon. Mike Pruter represented the employer. Exhibit 1 was received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Colleen Hogan was employed by Alpine Glass, Inc. as a full-time telemarketer from 2018 until July 17, 2020, when the employer discharged her from the employment. The discharge followed multiple incidents in which Ms. Hogan, solely or jointly, substantially disrupted the employer's call center operations. The employer's written work rules prohibited unprofessional conduct and noise that interfered with employees attempting to make sales. The same work rules also prohibited profanity.

The final incident occurred on July 16, 2020, when Ms. Hogan's son disrupted call center operations through profane belligerent utterances in which he announced that he was quitting. Ms. Hogan joined in with her own emotional outburst, further disrupting call center operations. Mike Pruter, Sales Manager, heard the commotion on the call floor, and directed Ms. Hogan to take the rest of the day off. The following day, the business owner notified Ms. Hogan that she would not be allowed to return.

The final incident followed another incident on July 10, 2020, wherein Ms. Hogan and her son disrupted call center operations through profane, belligerent rants directed at coworkers while

Mr. Pruter was away from the workplace. Ms. Hogan's agitation caused one or more coworkers to be in fear that the conduct would escalate to physical violence. One coworker recorded the outburst. The belligerent conduct made it necessary for the sales manager from a different location to become involved and subject to Ms. Hogan's rant. The conduct made it necessary for Mr. Pruter to call and speak with Ms. Hogan. Ms. Hogan unreasonably demanded that all commissions flow to her and her son and ranted about the employer continuing to employ workers with attendance issues. Ms. Hogan hung up on Mr. Pruter. The employer subsequently spoke with Ms. Hogan and told her that further outbursts would not be tolerated.

These two final outburst incidents followed others on May 20, 2019 and April 20, 2020 in which Ms. Hogan similarly disrupted call center operations through belligerent utterances and conduct. In the first instance, Ms. Hogan yelled that she quit and stormed out after the employer, per policy, had her wait until later in the work day to receive her check because she had returned late from a break. In the latter instance, Ms. Hogan yelled across the call floor to a coworker to remind the coworker of a \$50.00 unpaid debt.

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).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. *Deever v. Hawkeye Window Cleaning, Inc.* 447 N.W.2d 418 (Iowa Ct. App. 1989).

The evidence in the record establishes a discharge for misconduct in connection with the employment. The evidence establishes that Ms. Hogan repeatedly disrupted the employer's business operations through her irrational outbursts and belligerent conduct. The final two incidents occurred within six days of one another. Ms. Hogan's repeated workplace tantrums demonstrated an intentional and substantial disregard of the employer's interests in maintaining a civil, orderly, and productive workplace. Ms. Hogan is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. She must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The September 2, 2020, reference 01, decision is affirmed. The claimant was discharged for misconduct in connection with the employment. The discharge occurred on July 17, 2020. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. She must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



James E. Timberland
Administrative Law Judge

December 7, 2020
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.