

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ANNA C EARLEYWINE**  
Claimant

**APPEAL NO. 17A-UI-00750-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEEMSTRA PARTNERSHIP INC**  
Employer

**OC: 12/04/16**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated January 17, 2017, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 9, 2017. Claimant participated personally. Employer participated by Joe Heemstra and Kimberly Heemstra. Employer's Exhibits 1 through 7 were admitted into evidence.

**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 December 8, 2016. Employer discharged claimant on December 9, 2016 because claimant made a rude and derogatory statement about the co-owners of employer's business after claimant had been given guidance about negative actions and statements.

Employer provided multiple co-worker's testimony surrounding claimant's negative comments about employer. Claimant denied that she had ever been counselled regarding a negative attitude or negative statements. Employer also provided his testimony and that of claimant's coworker that they had been counselled on October 4, 2016 about having a positive attitude. Claimant denied that this meeting occurred. Employer also stated that twice in December brainstorming sessions on marketing had to be stopped as claimant was being very negative.

Employer received information from an employee that on December 7, 2016, claimant stated, "I fucking hate Kim and Joe." This was stated in a public area of the salon, at the front desk. As business was slow, claimant was not saying this in front of customers. When this statement was brought to claimant on December 9, 2016, she did not apologize or explain. Employer then terminated claimant's employment.

Claimant denied that she had ever been given any guidance or that she had ever made derogatory statements about employers. Claimant did state that she did not have any idea why her coworker would make up a statement saying claimant publicly used foul language about employees.

Employer gave a list of rules and regulations to all employees upon hire. Said document stated that foul language is prohibited. Claimant stated that she had never gotten the document although a coworker said that the document was a part of the introduction upon hire.

### **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.

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).

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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning obscene language and disrespectful behavior. Claimant was warned concerning this policy.

It is the finding of the administrative law judge that claimant did make obscene statement regarding the owners of the business where she worked. As she did make this obscene statement in public after having been counselled about a negative attitude, claimant committed misconduct. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Profanity or other offensive language in a confrontational or disrespectful context may constitute misconduct, even in isolated situations or in situations in which the target of the statements is no present to hear them. See *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Here, claimant's offensive language was so disrespectful and out of the norm that a coworker immediately left the confrontation and called owner after work that night.

The last incident, which brought about the discharge, constitutes misconduct because claimant certainly should have known that her ongoing negative behavior would not be allowed. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

#### **DECISION:**

The decision of the representative dated January 17, 2017, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid

wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

bab/rvs

**NOTE TO EMPLOYER:**

If you wish to change the street name of record, please access your account at:

<https://www.myiowau.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

[http://www.youtube.com/watch?v=\\_mpCM8FGQoY](http://www.youtube.com/watch?v=_mpCM8FGQoY)