

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDACE L BUCKNER
Claimant

APPEAL NO: 15A-UI-02544-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES INC
Employer

OC: 02/08/15
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 19, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 31, 2015. The claimant participated in the hearing. Turkessa Newsome, Human Resources Generalist, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer service representative for APAC Customer Services from May 23, 2012 to February 6, 2015. She was discharged for inappropriate and unprofessional behavior.

On October 7, 2014, the claimant was acting team lead. Associate Megan told the claimant she slept with the claimant's boyfriend Mark. The claimant confronted Mark after work that evening and he denied sleeping with Megan. Later that night Megan contacted the claimant through Facebook and stated she did not know the claimant was seeing Mark and he was not "a good guy" and stated both of them should leave him alone. The claimant did not know which of them was being truthful with her.

On October 8, 2014, Megan continued to try to talk to the claimant about the situation and stated she was going to confront Mark when he arrived at work. When Mark reported for his shift Megan did talk to him and then returned to where the claimant was working. The claimant asked her if she was okay and Mark came over and confronted both women very loudly and used profanity, disrupting the floor. Megan became upset so the claimant took her off the floor so she could calm down. The claimant and Megan went outside for about 15 minutes and other employees repeatedly asked them what happened. Megan thought everyone on the floor was mad at her and were going to gang up on her so she went to human resources. As a result,

the claimant, Megan, and Mark all received first and final written warnings. The warnings stated that any further incidents violating the employer's standard of conduct or any policy, rule, or procedure may result in termination. The employer did not issue the warning until November 4, 2014 nearly one month after the incident occurred.

At the beginning of December 2014, another associate, Susan, made comments about the claimant's mothering abilities and her daughter and the claimant confronted her about it and Susan apologized. The claimant asked Susan if she was dating Mark and Susan stated she did not date or talk to Mark. The claimant was upset because Susan had a reputation at work and the claimant often observed Susan and Mark talking and going on break together. The claimant and Mark ended their relationship around January 7, 2015. At the end of January 2015, Susan came to work with a tattoo of Mark's name on her chest and repeatedly walked up and down the claimant's row asking employees what she should put on the tattoo so it would not peel. When another employee questioned Susan about the "Mark" in her tattoo, Susan said it was her father's name. On February 2 or 3, 2015, the claimant kept hearing rumors that Susan and Mark were together. She confronted Mark and he said it was not what it looked like.

On February 4, 2015, Susan continued walking up and down the claimant's row displaying her tattoo and the claimant and Susan were giving each other "dirty looks." The claimant went to help an associate in a cubicle located diagonally across from Susan. The claimant and Susan continued giving each other dirty looks but did not exchange any words. Susan went to human resources and stated the claimant came to her cubicle when she was taking phone calls and said "Congratulations on your relationship. I hope it works out." Susan then told Mark she went to human resources to try to get the claimant fired because she was afraid the claimant and Mark would get back together. The employer called the claimant to the office around 4:00 p.m. on February 6, 2015 and terminated her employment for violating the first and final written warning. Mark called the claimant that night and told her he had been seeing Susan since October 2014 and just found out she was pregnant. He also confirmed Susan's tattoo was his name, not her father's name. The claimant testified she did not speak to Susan on February 4, 2015 and did not say "Congratulations" because she did not know about Susan and Mark's relationship or the pregnancy until Mark called her the evening of February 6, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was in a relationship with co-worker Mark who also had relationships with co-workers Megan and Susan during the time he and the claimant were together. That situation was ripe for confrontations to erupt in the workplace and there were two occasions when the various relationships caused problems at work for the parties involved and the employer. The evidence provided by the employer did not demonstrate that the claimant behaved unprofessionally October 8, 2014 but rather that Mark and Megan were inappropriate. Similarly, the claimant's testimony that she did not speak to Susan on February 4, 2015, but they did give each other dirty looks and she did not congratulate Susan on her relationship with Mark because she was not aware of their relationship until Mark told her the evening of February 6, 2015, was credible and persuasive. Susan did not participate in the hearing and provide testimony or subject herself to questioning or cross-examination. Consequently, the claimant's first hand testimony regarding the events of October 8, 2014 and February 4, 2015 carries more weight than the employer's second hand testimony. Under these circumstances, the administrative law judge must conclude the employer has not demonstrated that the claimant's actions rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The February 19, 2015, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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