

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTINE C WIGHTMAN**  
Claimant

**APPEAL NO. 08A-UI-04124-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LENSCRAFTERS INC**  
Employer

**OC: 03-30-08 R: 03  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 21, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 13, 2008. The claimant did participate. The employer did participate through Mike Sindelar, Regional Director of Operations, and was represented by Francis Landolfi of TALX UC eXpress.

**ISSUE:**

Was the claimant discharged for work related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a lead lab technician, full-time, beginning August 21, 1997, through April 1, 2008, when she was discharged. The claimant was discharged for threatening a coworker with physical harm and for touching a coworker.

On March 25, 2008, the claimant and the store's general manager, Susan Knepe, were involved in an altercation. The claimant and Ms. Knepe were shouting at each other over a disagreement about whether another employee should be sent home early leaving the claimant to work by herself. As the discussion became more and more heated, the two began yelling at each other. The claimant was overheard to say to Ms. Knepe "don't touch me get your finger out of my face." Ms. Knepe backed the claimant against a counter top and then reached up and put her hand on the claimant's collar bone with her thumb in the small of the claimant's throat. Ms. Knepe pushed the claimant back against the countertop. The claimant could not back up or flee, as she was against the countertop, and she wanted Ms. Knepe to stop pushing her, so she reached up and put her hand around Ms. Knepe's throat, forcing her head back in an attempt to get Ms. Knepe to take her hands off of her. All of the witnesses agree that it was Ms. Knepe, general manager, the highest ranking person in the store, who first laid hands on the claimant. The claimant only touched Ms. Knepe after she had already been touched and then only in an attempt to get Ms. Knepe's hands off of her.

This was not the first shouting match or altercation between Ms. Knepp and the claimant. Each had been previously disciplined for the conduct and behavior in the office as they shouted at each other.

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

For the reasons that follow, the administrative law judge concludes 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.

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).

No employee should ever be subjected to physical assault from their supervisor or superior. It is axiomatic under the law that mere words can never justify assault. The claimant was subjected to physical assault by her manager, Ms. Kneppe. Ms. Kneppe did not testify at the hearing. The only person with any firsthand knowledge of events to testify at the hearing was the claimant. The employer indicated that while Ms. Kneppe was disciplined, she was not discharged for admittedly pushing an employee. Ms. Kneppe began the physical altercation between herself and the claimant. The claimant, the only eyewitness to the events to participate in the hearing, testified at the hearing that she was backed up against a counter and unable to flee from Ms. Kneppes's physical aggression. Additionally, as Ms. Kneppe's was the highest ranking person in the store, the claimant could hardly seek help from her to stop the physical aggression, as she was the aggressor. No employer is required to allow employees to physically assault coworkers or supervisors. Additionally, no employee is required to endure physical assault from a Supervisor. The claimant was discharged for threatening and/or harming Ms. Kneppe, yet Ms. Kneppe was only written up for her behavior and she was the aggressor. Such a double standard for supervisors versus employees establishes bias on the part of the employer. An employer may not have one standard of conduct for physical aggression for supervisors and another for employees. The claimant was allowed to defend herself under the circumstances. The claimant's pushing Ms. Kneppe's head back with her hand around her throat was done in self defense when she had no opportunity to flee or seek help from a superior. The claimant's actions for which she was discharged are not misconduct. Defending oneself from physical aggression when there is no opportunity to flee or to seek help from the supervisor is not misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The April 21, 2008, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

---

Teresa K. Hillary  
Administrative Law Judge

---

Decision Dated and Mailed

tkh/kjw