

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAYLA R DVORAK
Claimant

APPEAL NO. 09A-UI-00489-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MARION SENIOR DEVELOPMENT LLC
SUMMIT POINT ^c/_o WALKER ELDER CARE**
Employer

**OC: 12-07-08 R: 03
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 9, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 28, 2009. The claimant did participate along with her witnesses Mary Curtis, a former employee and Nancy Dean, Business Office Manager. The employer did participate through Sue Dekovic, Corporate Human Resources.

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 food server and dining room assistant full time beginning December 22, 2006 through December 3, 2008 when she was discharged.

As a result of a state department of health inspection the claimant and her coworkers were told that they needed to remove their rings that contained stones and any jewelry on their wrists. At a meeting on December 2 the claimant and Nick Janda (her supervisor) and Nancy Dean (business office manager) met to discuss whether the claimant was removing her jewelry. During the meeting the claimant indicated that she would remove her rings with the exception of her wedding band. Her wedding band contained stones which under the department of health regulations meant that it had to be removed. Mr. Janda was only enforcing the rules that were imposed upon him by the government; it was not his own choice as to which employees had to remove which jewelry. The jewelry removal rule was being equally applied to all employees who handle food, not just the claimant. During the meeting the claimant admitted that she said the word "bastard" under her breath while addressing Mr. Janda. Mr. Janda told her not to call him a bastard during the meeting.

The claimant had received an employee handbook that prohibited use of profanity when speaking to her supervisor, coworkers or residents.

The claimant had been warned on August 26, 2008 about insubordination when she got into an argument with her Mr. Janda in the kitchen. At that time the claimant was told that any other further incidents of insubordination could result in her discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990).

During a meeting with her supervisor and Nancy Dean the claimant said the word "bastard" under her breath. She was overheard by Mr. Janda who believed she was referring to him. The claimant was being told at the meeting that due to a health department directive she and all of the other food service workers would be required to remove any rings that contained stones and any watches or wrist jewelry. The rule was being enforced by the employer because they were

required to do so by the state department of health. The claimant was not being treated any differently than any other employee as the policy was being applied to all employees.

The claimant had received the employer's handbook and policy book that prohibits profanity in the workplace. The claimant was referring to her supervisor as a 'bastard' when he was merely enforcing a work rule that was his obligation. The claimant had previously been warned about insubordination. While the claimant may have been angry with her supervisor about other issues in the past, her choice to call him a 'bastard' for enforcing rules imposed on the employer by the department of health was conduct not in the employer's best interests. The claimant's refusal to remove a ring that was not in compliance with the regulation and her reference to her supervisor as a 'bastard' in conjunction with her past history of discipline is sufficient misconduct to disqualify her from receipt of unemployment insurance benefits.

DECISION:

The January 9, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs