

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**TAMMY L GREENE**  
Claimant

**5TH JUDICIAL DISTRICT**  
Employer

**APPEAL 16A-UI-08757-CL**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/17/16**  
**Claimant: Appellant (1)**

---

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 2, 2016, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A hearing was held in Des Moines, Iowa on August 30, 2016. Claimant participated personally and through witness Bobby Buckner who appeared by telephone. Employer participated through administrative officer Kristi Skare, secretary Brenda Ramirez, secretary Dorcelaine Davison, probation/parole officer II Kevin Christensen, and assistant director Nancy Robinson. Employer was represented by Sandra Linsin with Employers Edge who appeared by telephone. Human resource employee Carrie Schouten observed. Employer's Exhibits 1 through 3 were received. Claimant's Exhibit A was received.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on December 17, 2004. Claimant last worked as a secretary. Claimant was separated from employment on July 14, 2016, when she was terminated.

Employer has a policy prohibiting employees from making threats of violence in the workplace. Claimant was aware of the policy.

Claimant has a history of difficulties at work. Claimant has been subjected to numerous disciplinary actions and has had interpersonal conflicts with her co-workers. Claimant has been assigned to work in different work areas and with different individuals. Claimant continued to experience difficulties even when assigned to work with different co-workers or in a different work area.

In April 2016, claimant was assigned to work at an office known as 1000 Washington. Claimant worked with three other secretaries at this office—Brenda Ramirez, Dorcelaine Davison, and Marli Jefferson. When claimant began working at the location, there was some dispute as to

who would be permitted to take their lunch break at 1:00 p.m. Ultimately, claimant and secretary Brenda Ramirez were permitted to alternate who took their lunch break during this time slot. Also after claimant arrived at the new location, she filed a grievance regarding being allowed to bid which shift she worked and for which supervisor. This made the other secretaries upset, as they had made arrangements for childcare and their personal lives based on the hours and locations they had already been assigned. Claimant dropped the grievance shortly after May 10, 2016, and the hours were not rebid. In other words, the schedules for the secretaries did not ultimately change in any way.

On June 2, 2016, claimant was talking to secretary Brenda Ramirez. Secretary Dorcelaine Davison was sitting 10 to 20 feet away from claimant and Ramirez. Claimant stated to Ramirez that she and her husband were talking the night before about claimant taking a gun to work and “taking out” a list of her co-workers. Claimant stated she would “take out” the warrant team first because they were armed. Claimant stated several times during this conversation that she was joking, but remarked that she probably should not be making these comments. Ramirez thought claimant was joking and was not concerned about the comments.

Davison overheard claimant making a comment about bringing a gun to work, but did not hear claimant state she was joking. Davison was concerned about the comments made by claimant. Davison had seen claimant become frustrated and lose her temper at work after the secretaries disagreed about scheduling lunch breaks. Davison sent Ramirez an email stating she was concerned about claimant’s comments.

On June 3, 2016, Davison spoke to probation/parole officer II Kevin Christensen about claimant’s comments. Christensen informed Davison she was required to report the comments immediately. The comments were reported to upper management and claimant was suspended with pay the same day. Employer did not inform claimant why she was being suspended.

Christensen had a good relationship with claimant. Thus, Christensen escorted claimant out of the building. As Christensen was walking claimant out of the building she stated, “I think I know what this is about. I made a comment....” Christensen then interrupted claimant and told her not to say anything else.

Later that day, claimant called Ramirez at work. Claimant asked, “Can I ask you a question?” Ramirez said no, because she wanted no involvement in the situation.

Employer assigned central office employees to investigate the allegations against claimant. The investigators interviewed Ramirez, Davison, Christensen, and claimant, as well as several other individuals. The investigators concluded claimant made the comments, although claimant denied doing so.

Based on the conclusion of the investigators, employer terminated claimant’s employment on July 14, 2016. Claimant had never been previously warned for similar conduct.

#### **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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer has presented substantial and credible evidence that claimant made threatening comments in the workplace. Although claimant denies making the comments, I find the testimony of employer's witnesses credible. Although claimant may have had minor disagreements with Ramirez and Davison, I do not find they had sufficient motivation to frame claimant for engaging in threatening conduct. Furthermore, Christensen testified that claimant disclosed to him that she believed she was being suspended for "making a comment." His testimony corroborates the testimony of Ramirez and Davison. Christensen always got along with claimant and has no apparent motivation to fabricate this story.

It was well known claimant had been having difficulties at work. It is unclear whether claimant was joking when she made the comments. What is clear is that Davison did not believe claimant was joking and felt threatened by the comments. The policy prohibits creating a hostile work environment by means of words or actions which would have the purpose or effect of alarming another person. Here, claimant's words had the effect of alarming another person. What's more, claimant admitted to Ramirez that she knew she should not be making these comments. Claimant willfully violated employer's Violence in the Workplace policy with deliberate disregard to employer's interest in maintaining a safe and secure work environment. This is misconduct even without prior warning.

**DECISION:**

The August 2, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant is deemed eligible.

---

Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

---

Decision Dated and Mailed

cal/

**NOTE TO EMPLOYER:**

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

<https://www.myiowauui.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>