

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSIETTA STRAIGHT
Claimant

APPEAL NO. 08A-UI-10764-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

PERSONNEL PLANNERS INC
Employer

OC: 04-20-08 R: 12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 4, 2008, reference 07, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 3, 2008. The claimant participated in the hearing. Tony Prather, Administrator; Anitra McAllistar, LPN; and Gwendolyn Williams, Employer Representative, 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 CNA for Personnel Planners from May 1, 2008 to September 10, 2008. On September 9, 2008, the claimant went to the nursing desk and asked where the other CNA was because it was time for the claimant to take her break. LPN Anitra McCallistar told her she did not know where the CNA was and the claimant went to the dayroom until she saw the supervisor at the desk. She went back and asked again where the CNA was and the supervisor told her she was on break. The claimant was upset because it was her turn to take a break and as she was walking away she said, "Y'all are blowing me." She went to the dayroom and got a resident and as she passed the nurses station with the resident she said, "Y'all bitches gonna make me catch a case." Ms. McAllistar reported the claimant's comment to the supervisor and was instructed to send the claimant home. When she told the claimant she had to leave the claimant said "okay," gathered her belongings and left. The next morning she went in to get her check and was notified her employment was terminated for using profanity and threatening language. The claimant did not deny the accusations or question her termination. She filed a grievance with the union but the union chose not to pursue the case.

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 section 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 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). While the administrative law judge found the employer's testimony credible and believes the claimant directed profanity toward Ms. McAllistar and her behavior was inappropriate and unprofessional, this was an isolated incident of misconduct. Therefore, while not condoning the claimant's behavior, the administrative law judge must conclude that this was an isolated incident of misconduct and as such does not rise to the level of disqualifying job misconduct as defined by Iowa law. Benefits are allowed.

DECISION:

The November 4, 2008, reference 07, 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

je/css