

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 05A-UI-11266-SWT  
OC: 10/02/05 R: 04  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 27, 2005, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on December 13, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Shea Schreiber. Jan Ellingson participated in the hearing on behalf of the employer. Exhibits A through E and One through Three were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the employer as a cook for the employer from July 26, 2000, to October 4, 2005. The claimant was informed and understood that under the employer's work rules, insubordination, failing to cooperate with employees, failing to follow job instructions,

failing to maintain a warm and positive atmosphere, and using profanity were grounds for disciplinary action.

On October 4, 2005, Jan Ellingson and the dietary supervisor, Deb Hilgerson, called an impromptu meeting for the dietary staff at about 2:00 p.m. The claimant had just put pork chops on the grill for the supper meal. When Hilgerson informed the claimant about the meeting, she told Hilgerson to give her a minute to get the pork chops off the grill and into the oven. The claimant was concerned about food safety and did not want leave the pork chops out. Hilgerson came back a short time later and insisted that she go to the meeting. The claimant had to leave the pork chops on the grill to attend the meeting in Ellingson's office.

During the meeting, the claimant was argumentative with the supervisor and employees. Before Ellingson had concluded the meeting, the claimant stood up and said she had to fix supper and get the snacks for the 3:00 p.m. break ready. Ellingson told the claimant to sit down because the meeting was not over. The claimant sat down. When Ellingson asked the staff for suggestions about working together the claimant again stood up and said she had to get supper ready and left. She did not hear Ellingson when she requested that the claimant sit down again.

Before the claimant left work that evening, she called the dietary supervisor at home and told her that she was going to the doctor and would not be at work the next day because she had such a bad headache and sick stomach from the meeting.

One of the dining room assistants reported to Ellingson that the claimant had used profanity in the presence of employees and residents and threatened to quit her job. This report was untrue, and the dining room assistant had made false accusation about the claimant's using profanity at work before. Hilgerson also reported to Ellingson that the claimant had made derogatory comments about Ellingson and Hilgerson in front of residents and staff.

On October 5, 2005, Ellingson telephoned the claimant, told her things were not working in the kitchen and she was terminated. The claimant was discharged for her conduct on October 4, 2005, which the employer considered in violation of the work rules set forth in the first paragraph of these findings. The claimant had not received any previous discipline during her employment.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 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 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibility about her reasons for waiting to get back to the kitchen on October and she was understandably concerned about the food safety issues. The claimant has shown that the dining room assistant's claim that the claimant used profanity in the presence of employees and residents is not worthy of belief. Since the dining room assistant did not testify, the claimant was the only party at the hearing with firsthand knowledge of what happened after the meeting.

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. At most, the evidence establishes that the claimant displayed a uncooperative attitude when she was called into the meeting, but this does not rise to the level of work-connected misconduct as defined by the unemployment insurance law.

DECISION:

The unemployment insurance decision dated October 27, 2005, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/pjs