

**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-11769-LT
OC: 10-30-05 R: 01
Claimant: Appellant (1)**

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the November 15, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 6, 2005. Claimant did participate and was represented by Richard Sturgeon. Employer did participate through Julie Barto, Carole Dwyer, Kari Foster, Gloree Clausen, and Michelle Gries.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time billing clerk from August 8, 1994 through October 31, 2005 when she was discharged. On October 26 Carole Dwyer, nurse practitioner, approached claimant and her about why she had recoded billing Dwyer had already done. Claimant became upset and swore at Dwyer saying, "This is not my fucking problem, you need to talk to the supervisor."

Dwyer told her she really had a bad attitude and claimant exploded, saying, "I hate this fucking place" and other similar statements. She got up and approached Dwyer until she was very close to her face and was very red in the face to the point that Dwyer was fearful of being physically struck. "It's not just you that I hate." And while leaving the building she swore all the way while walking past patients. The situation had escalated to the point that Dwyer and another employee Gloree Clausen feared claimant would strike Dwyer. There was a similar incident two days earlier and also in June or July when she wrote a complaint letter to her supervisor. On October 28 employer suspended her and referred her to the local employee assistance program (EAP). Claimant did set an appointment and returned to work on October 31 and discharged her.

On May 25 Dr. Spartz explained to claimant that it was her duty to enter information into the computer and claimant said, "Fuck you" and left the building for about ten minutes. Dr. Mary Schneider warned her verbally that this behavior was not appropriate and she could face discharge if it happened again.

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 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 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).

Claimant’s frustration with the new computer system was not a reasonable excuse for verbally abusing coworkers and at least one doctor or swearing in front of patients. This conduct, even without prior incident or warning, is misconduct. Benefits are denied.

DECISION:

The November 15, 2005, 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.

dml/kjf