

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LEILANI L GRELL**  
Claimant

**APPEAL NO. 12A-UI-08486-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TRIMARK PHYSICIANS GROUP**  
Employer

**OC: 06/24/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated July 13, 2012, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on August 8, 2012. Ms. Grell participated personally. The employer participated by Mr. Ted Vaughn, Human Resource Manager, Michelle Sleiter and Lisa Randall-Weiman, Manager. Employer's Exhibits A, B, C and D were received into evidence.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Leilani Grell was employed by Trimark Physicians Group from March 23, 2000 until June 25, 2012 when she was discharged from employment. Ms. Grell held the position of full-time business associate I and was paid by the hour. Her immediate supervisor was Lisa Randall-Weiman.

Ms. Grell was discharged on June 25, 2012 based upon an incident that took place on June 20, 2012. At that time the claimant's immediate supervisor, Ms. Randall-Weiman was attempting to issue a disciplinary action to the claimant for failing to make reminder calls to patients about upcoming appointments. In response to the claimant's supervisor's comments on the disciplinary action form, Ms. Grell responded "seriously BS" and further wrote in reference to her supervisor "if she can't find other stuff to do than write people up all the time maybe she needs another job!" Because the claimant had been previously issued a written warning for disrespectful conduct towards her immediate supervisor, Ms. Randall-Weiman, on February 13, 2012, a decision was made to terminate Ms. Grell from her employment. (See Employer's Exhibit B).

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

Since the claimant was discharged the employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

An employer has the right to expect decency and civility from its employees and an employee's use of offensive language or demeanor in a confrontational, disrespectful or name-calling context may be recognized as misconduct disqualifying the employee from the receipt of unemployment insurance benefits. See Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits if it serves to undermine a superior's authority. Deever v. Hawkeye Window Cleaning, Inc., 447 N.W. 2d 418 (Iowa Ct. App. 1989).

The evidence in the record establishes that Ms. Grell had engaged in confrontational disrespectful conduct towards her supervisor in the past and had been warned by the employer at that time. Ms. Grell was discharged after writing an inappropriate epitaph and statement about her supervisor that was disrespectful and served to undermine her supervisor's authority. The claimant's conduct on June 20, 2012 showed a willful disregard for the employer's expectations and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated July 13, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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