

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOLLIE A BARTH
Claimant

APPEAL NO. 12A-UI-08921-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**POCAHONTAS AREA COMMUNITY
SCHOOL DISTRICT**
Employer

**OC: 06-10-12
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 17, 2012, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on August 22, 2012. The claimant did participate. The employer did participate through (representative) Joseph Kramer, Superintendent; Amy Feld, Director of the Daycare; and Kristal Poyzer, the former assistant to Director.

ISSUE:

Was the claimant discharged due to job-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 caregiver full time beginning August 17, 2011 through June 8, 2012 when she was discharged. The claimant was called into her supervisor's office to be reprimanded for violation of the cell phone policy, failure to follow the overtime policies and failure to make available the proper silverware at breakfast. When given the letter of reprimand the claimant began swearing at Ms. Poyzer, "why don't you just f**king fire me." The claimant was discharged for using profanity when speaking to her supervisor during the reprimand. On March 1 all employees including the claimant were given a reminder during a staff meeting that no profanity was allowed.

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.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). "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." This is ordinarily a fact question for the agency. *Budding v. Iowa Department of Job Service*, 337 N.W.2d 219 (Iowa App. 1983) is overruled "to the extent [it] contradicts this position. *Myers v. Employment Appeal Board*, 462 N.W.2d 734 (Iowa App. 1990). The Administrative Law Judge is persuaded that when given her reprimand the claimant began swearing at Ms. Poyzer in contravention of the employer's policies. The claimant knew or should have known that such profanity was not allowed. The claimant's actions amount to misconduct sufficient to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The July 17, 2012 (reference 04) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css