

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELINDA NASSIF**  
Claimant

**APPEAL NO. 12A-UI-12094-WT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ST LUKES METHODIST HOSPITAL**  
Employer

**OC: 09/09/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a fact-finding decision dated October 2, 2012, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 20, 2012. Claimant participated personally. Employer participated by Carma Ernster, Manager of Support Services and Katie Sievert, H.R. Generalist.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

Claimant was employed as full-time housekeeper on the evening shift. She was discharged on September 18, 2012 by employer for insubordination.

On September 14, 2012, claimant met with supervisors Marie Shrock and Jason Yousse because of concerns about her paycheck. She believed she was not being paid for hours she worked. This meeting occurred prior to her scheduled 4:00 p.m. shift. Ms. Shrock and Mr. Yousse insisted that her paychecks were correct. The claimant was not satisfied. She left the meeting unhappy. After leaving the meeting, she texted her lead worker, who she also believed was a friend, Alicia Crock. The first text at 2:24 p.m. stated, "Tell Jason I am not coming in. They upset me. Marie can fuck off. I am not working today." A subsequent text at 3:31 stated, "You and Jason and Marie can go to hell. Rip me off on my payroll and I don't care if Jason and Marie fired me. I called my lawyer and I am going to sue that department." Ms. Crock turned these texts in to her manager.

Ms. Sievert called the claimant in to meet the following Tuesday and terminated the claimant.

## REASONING AND CONCLUSIONS OF 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

The term “misconduct” under Iowa law may encompass many different types of conduct. The phrase “material breach of a worker’s contract of employment” is significant. This phrase essentially means that the employer must prove the worker intentionally violated a reasonable employment standard. The rule essentially anticipates two general types of misconduct under Iowa law, broadly categorized as universal misconduct and work rule misconduct.

Universal misconduct would include misconduct which any reasonable worker should reasonably know is a violation of any employer’s work standards. Examples of this type of misconduct would include theft from the employer, initiating violence in the workplace without justification, intentionally damaging property and other intentional acts evincing a willful disregard for the employer’s interest. In other words, any worker in the competitive job market should understand that they would be fired for such a violation regardless of whether a formal or specific work rule is in place.

“Work rule” misconduct would include reasonable standards or rules which an employer sets for its place of employment which a worker knowingly violates. In essence, it is a standard because the employer said it is. In such instances, the burden is upon the employer to demonstrate that it had a reasonable work rule, the worker was aware of the rule, and knowingly violated the rule. Examples of this type of “work rule” misconduct would include tardiness violations, violations of a cell phone use policy, and dress code violations. Importantly, different employers and different industries may have different reasonable work standards on these topics and acceptable behavior is often relative.

In this matter, the evidence failed to establish that claimant was discharged for an act of misconduct.

Insubordination is a form of universal misconduct. Insubordination is defined as the act of being disobedient to authority. The most common type of insubordination is the refusal to follow a reasonable work directive but it can cover any type of act which is disobedience which is contrary to the employer’s interests. Every worker in today’s competitive job market knows that they cannot commit an act which effectively undermines their employer.

To begin with, nothing the claimant did during the course of the meeting on September 14, amounted to misconduct. The claimant questioned her paycheck. She threatened to quit. The employer did not like her attitude at the meeting but essentially conceded at hearing that neither of these actions are misconduct. The employer made no other specific allegations regarding this meeting.

Following the meeting, the claimant sent at least two text messages to Alicia Crook. Ms. Crook did not testify at hearing. Ms. Crook was the claimant’s lead worker. Claimant also considered Ms. Crook to be a friend. Importantly, Ms. Crook was not claimant’s supervisor. She was not a management employee at all. The entire context of the conversation with her lead worker was not revealed at hearing. Two isolated text messages were read into the record. These texts undeniably expressed frustration by the claimant and demonstrated an attitude of disregard for the employer’s interests. They do not, however, prove that the claimant committed an act of insubordination for the following reasons.

Most importantly, the context of these text messages was not proven. It is apparent that the two texts read into the record were not the only two texts exchanged between Ms. Crock and the claimant. It is unclear how many other texts were sent or what else was communicated. This is significant because claimant testified that she and Ms. Crock were also friends. The claimant was inarticulate at hearing but she did manage to clearly state that there was a great deal of additional information communicated between the two which was not presented at hearing. The greater weight of evidence supports the conclusion that the claimant was venting to Ms. Crock as a friend rather than attempting to send a message of insubordination or disobedience to her supervisors. Venting to a non-management co-worker, even if that venting expresses an attitude which is contrary to the employer's interests, is not misconduct unless it is accompanied by an intentional act.

The second text message in the record was sent over an hour later and it was directed at both supervisors and Ms. Crock. Obviously there must have been a number of communications between the two before this email was sent. There is no evidence in the record regarding what Ms. Crock texted to the claimant in the interim. The claimant repeatedly stated there "was a lot more to it" and suggested that Ms. Crock actually encouraged her in many respects. The employer even acknowledged that texting was not a normal means of communication between management and staff. In this respect, what Ms. Crock stated to the claimant is of utmost importance.

In the final analysis, the entire text exchange between the claimant and Ms. Crock should have been submitted as evidence if the employer truly believed that these communications amounted to intentional insubordination by the claimant. The absence of this evidence is significant. Without the entire context, the two isolated messages appear to amount to poorly phrased venting rather than any deliberate act of insubordination. It is found that the employer terminated the claimant for her attitude, not for any specific acts which amount to misconduct under Iowa law. This reason is probably legal and perfectly legitimate as a personnel decision, but it does not disqualify the claimant from benefits.

**DECISION:**

The fact-finding decision dated October 2, 2012, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Joseph L. Walsh  
Administrative Law Judge

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Decision Dated and Mailed

jlw/css