

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY R GLISAN
Claimant

APPEAL NO. 13A-UI-07679-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KOSMITH INC
Employer

OC: 06/02/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 19, 2013, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 10, 2013. Claimant participated with her daughter and former coworker, Alicia Viner. Employer participated through general manager, Christian Maranville and area supervisor, Jeff Gillette. Employer's Exhibits 1 and 2 were received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a swing manager and was separated from employment on June 3, 2013. On May 28, hourly worker Derrick Penrey, swing manager Chantal Sperling's boyfriend, reported to Gillette that claimant confronted Sperling telling her that if she ever heard her "talking shit" behind her back she would "fucking lay you out. I'm just warning you that shit will fly through the roof." She also stated that she did not want to work in the kitchen with Sperling but wanted to "go back there and punch her in the face." (Employer's Exhibit 2) Viner was not present as her separation date was May 21, 2013 and she did not work after Maranville returned from vacation on May 25, 2013. Claimant denied the allegations but had been warned in writing on May 13, 2013, about swearing at general manager Maranville in a text message saying about a write up, "well, fuck you very much." She also sent a company computer message on April 30, saying "I really don't give a shit anymore!!!!"

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.

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. 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." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa App. 1990).

Claimant's denial of the evidence is not credible given her history of volatile language and interactions with supervisors and subordinate employees, both verbally and in writing. The employer has presented substantial and credible evidence that claimant used abusive, even threatening, language towards coworkers and supervisors. As a swing manager, she is charged with knowing the employer's policy and general, reasonable standards of business conduct. By violating both, she engaged in deliberate misconduct. Benefits are denied.

DECISION:

The June 19, 2013 (reference 02) 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css