IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MELISSA HINES Claimant **CSL PLASMA INC** Employer	**APPEAL 21A-UI-07715-SN-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/14/20** **Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 3, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the finding of misconduct for violation of a known rule. The parties were properly notified of the hearing. A telephone hearing was held on May 25, 2021. The claimant participated and testified. The employer participated through ADP Hearing Representative Roxanne Rose and Assist Center Manager Tabathia Dells.

The claimant provided exhibits A-C, which were admitted into the record. The employer provided two policies as proposed exhibit 1, one which is the Standards of Employee Conduct and Corrective Action Process policy and the other being the Workplace Violence policy. These exhibits were read into the record because the claimant stated she had not received them prior to the hearing, in order to make meaningful objections. Proposed exhibit 2 was a final written warning the claimant received in July 2020. This exhibit was read into the record because the administrative law judge did not receive a copy of it.

The claimant registered Assistant Center Manager Crystal Collins to testify as a witness. The administrative law judge determined there were not significant enough credibility questions to call Ms. Collins as a witness in support of the claimant.

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:

The claimant was employed full-time as a phlebotomist from July 3, 2019, until she was separated from employment on December 31, 2020, when she was discharged. The claimant reported to Crystal Collins and Assistant Center Manager Tabathia Dells.

The employer has a Standards of Employee Conduct and Corrective Action Process policy and a Workplace Violence policy. The Standards of Employee Conduct and Corrective Action lists "fighting and verbal abuse," "failure or refusal to follow written or oral instructions of a supervisor or manager," and "threatening, harassing or inflicting bodily harm to employees, customers and vendors" as actions which can result in corrective action, suspension or dismissal. The Workplace Violence policy states any form "of violence, threatening behavior, intimidation or other threatening or hostile conduct is prohibited. It defines threats of violence as "a communicated intent to inflict physical or other harm on any person or on property. Threats of violence can also include actions short of actual physical contact or injury, verbal, written or implicit threats, or menacing or other aggressive behavior." It states an employee who violates this policy is subject to disciplinary action up to and including immediate termination. The claimant received these policies at the time of her hire.

The claimant provided a copy of a performance evaluation written by Ms. Dells that she received for the period spanning from July 1, 2019 and June 30, 2020. Under a section labeled communication skills, Ms. Dell wrote the following remarks, "Employee demonstrates the ability to communicate effectively with others, both orally and in writing. Includes listening skills, clear, concise and courteous communications [sic]. Shares information and resolves conflicts with others. Uses tact and consideration and is tolerant and courteous to others." Under a section labeled service orientation, Ms. Dell wrote, "Works well with co-workers, donors and guests." (Exhibit B)

In January or February 2020, Adriana Rigsby and the claimant got into an argument regarding whether the claimant would go on break. The claimant told Ms. Rigsby that she did not want to go on break at that time because another phlebotomist had been called by management to leave the floor. They continued the argument for several minutes. The claimant then observed Ms. Rigsby was "giving her attitude" and cautioned that if she did not stop then she said, "I'm going to slap you." The claimant provided a print out from her Workday Account which describes the incident, but does not state when it occurred. (Exhibit A)

Approximately three months later, the claimant spoke with Center Manager Greg Boden about the incident that occurred in January or February 2020. Mr. Boden asked if there were any witnesses to the incident. The claimant stated she was getting a donor set up at the time who witnessed the incident. Mr. Boden did not ask for the donor's name.

On June 25, 2020, Adriana Rigsby reported the incident that occurred in January or February 2020 to management.

On July 8, 2020, Ms. Dells issued a final written warning to the claimant stating that if she had any further incidents before January 4, 2021, then she would be terminated. The final written warning was pulled up on a screen. The claimant did not sign the document because she thought doing so would be admitted guilt. At the time of the hearing, Ms. Dells testified she was unaware when the underlying conduct occurred.

On December 17, 2020, the claimant and Ms. Rigsby got into another argument. This argument began over whether Ms. Risgby had to go to another area of the property to retrieve iodine. The claimant observed that iodine was in the room in which they were working and asked why Ms. Risgby stated she was going to another area. Ms. Rigsby was reluctantly persuaded and as she passed the claimant to retrieve the iodine she was mumbling something. The claimant then said, "I know you're not getting smart," and asked Ms. Risgby if she wanted to "go out in the hallway to discuss the situation." Ms. Rigsby declined this request because she had "been there and done that before." The claimant then corrected Ms. Rigsby and said, "No. We haven't been

there and done that before because if had you would not have been standing." The claimant reported this incident to Assistant Center Manager Crystal Collins. Ms. Dells escorted Ms. Rigsby off the floor to get a statement from her.

Over the following days, Ms. Dells obtained statements from coworkers, Havilah Johnson, Natalie Young and Rahsheema King, which she maintains were consistent with the finding that the claimant, violated the policies. The employer did not provide these statements or make these coworkers available to testify.

On December 22, 2020, the claimant provided a statement describing what occurred on that day. The claimant then spoke with Ms. Dells about what occurred in her office. During this conversation, the claimant expressed that she wanted to "choke out" Adriana Rigsby and stated she has children older than Ms. Rigsby. The claimant further added she "does not play with kids."

On December 31, 2020, Ms. Dells, in consultation with Mr. Boden and the employer's Human Resources Department, determined the claimant should be terminated due to the December 17, 2020 incident. Ms. Dells thought the behavior justified termination because the claimant was currently on a final warning she received on July 8, 2020 for similar misconduct.

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 decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.*. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id*.

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the following allegations made by the claimant not credible:

The claimant's allegation she was merely requesting Ms. Rigsby come out into the hall to not disrupt the workplace is not credible. This allegation is not credible because the claimant's own statement written five days after the incident unambiguously describes the request as a threat to knock Ms. Rigsby unconscious.

The claimant's allegation that Mr. Boden allowed employees to vent and did not enforce the Workplace Violence policies is not credible. The claimant did not provide a specific conversation that indicated Mr. Boden had this kind of stance. Even if Mr. Boden had stated to the claimant that she could vent, venting is not the same thing as threatening a coworker with physical violence.

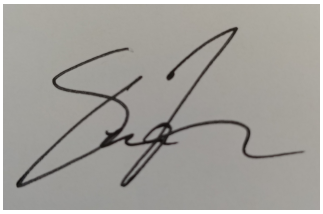
"A threat constitutes a sufficient willful or wanton disregard of an employer's interest and of the standards of behavior which an employer has the right to expect of employees." *Deever v. Hawkeye Window Cleaning, Inc.*, 447 N.W.2d 418 (Ct. App. 1989). The Court of Appeals arguably used more measured language in subsequent opinions. See *Myers v. Employment Appeal Bd.*, 462 N.W.2d 734 (Ct. App. 1990)(stating "employee threats *may* rise to the level of behavior so as to constitute misconduct.")

Here, the employer has met its burden. With actions so flagrantly against the interests of the employer, an employee is not required to be issued a warning prior to a finding of misconduct. This is especially true when it has a known policy against workplace violence and threats. The claimant's own handwritten account portrays her as the one who escalated the situation from mild grumbling to an invitation to physical violence in the hallway. Specifically, the claimant stated she hoped she could land a knockout blow on Ms. Rigsby. When the claimant was interviewed by Ms. Dells, she expressed no remorse. In fact, the claimant reiterated her desire

to physically harm Ms. Rigsby either by slapping her or “choking her out” during the investigative interview with Ms. Dells. While the administrative law judge is sympathetic to the idea of venting frustration about coworkers in a constructive way, an employer is not required to tolerate repeated threats of physical violence in the workplace before terminating an employee. Benefits are denied.

DECISION:

The March 3, 2021, (reference 01) unemployment insurance 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.



Sean M. Nelson
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June 17, 2021
Decision Dated and Mailed

smn/kmj