

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHUCK KLEJCH**

Claimant

**APPEAL NO: 15A-UI-05533-JE**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DIAGONAL EQUIPMENT COMPANY**

Employer

**OC: 11/23/14**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 29, 2015, reference 02, decision that denied benefits. After due notice was issued, a hearing was held in Creston, Iowa, before Administrative Law Judge Julie Elder on November 3, 2015. The claimant participated in the hearing with witness/former mechanic, Andy Millslagle, and witness/former secretary, Carrie McLead. Mark Steffenhagen, President, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-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 full-time technician for Diagonal Equipment Company from January 15, 2015 to April 3, 2015. He was discharged April 3, 2015, for inappropriate comments he made to the employer April 2, 2015.

The employer considered the claimant to be a “model employee” until approximately March 16, 2015, when the claimant’s attitude began to change towards the employer. The employer’s son also worked for the employer and the claimant and the employer’s son formed a bond while working together. The employer believed they were also taking side jobs away from him and was upset about that situation. The employer terminated his son’s employment in mid-March 2015, and the employees felt it was a tension filled environment after that occurred. When the employer asked the claimant how he was doing the claimant would respond, “Better than you. You’re a grump.” The employer subsequently rehired his son who worked for him until approximately April 1, 2015.

On March 19, 2015, the employer met with the claimant to ask him what was going on with his change in attitude. The first thing the claimant said was, “Well you work all the time and you are just a grump.” The employer stated he enjoyed working and the claimant replied, “You’re an asshole just like my previous boss.” The employer asked who he was referring to and the claimant said, “You’re just like Ike. You’re an asshole like Ike.” The employer asked the

claimant what was wrong and the claimant stated he was not going to work anymore overtime. He then said he did not want to talk about it further, stood up and returned to the shop. Any time after that conversation the employer would ask the claimant how it was going the claimant would reply, "You're just a grump."

The employer terminated his son's employment again around April 1, 2015. At 7:05 a.m. on April 2, 2015, the claimant had a diesel engine on the engine stand and was trying to get the manifolds off. The employer went to help him with the work and the claimant said, "You can stick these diesel engines up your ass." The employer stated, "This is how we make our living – working on engines." Around 5:00 p.m. that day the employer asked the claimant, "How did you do today?" and the claimant replied, "Better than you. You are just a grump." The parties then had an argument and both men raised their voices. The employer told the claimant, "Chuck, if you don't want to work here, quit. We have to do something different." After the claimant left for the day, employees Aaron Davenport and J.C. (last name unknown) approached the employer and stated the situation was getting out of control.

Before the claimant could clock in April 3, 2015, the employer notified him he was terminating his employment. The employer decided he could no longer tolerate the claimant's attitude, especially in light of his comment that the employer could "stick these diesel engines up his ass" and the complaints by two other employees regarding how tense the work environment had become.

#### **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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The employer's strained working relationship with his son caused tension in the work environment for several employees and the claimant's attitude change corresponded with the employer terminating his son's employment with the company. The employer rehired his son before discharging him again approximately two days prior to the claimant's termination of employment. Even assuming the claimant was upset about the employer's treatment of his son, who was the claimant's work friend, that situation did not give the claimant the right to treat the employer disrespectfully. He repeatedly responded to the employer's questions of how he was doing with, "Better than you. You're just a grump." That statement annoyed the employer but because the claimant was such a good employee the employer continued trying to talk to him about what caused his attitude to change and the claimant refused to discuss the matter. Finally, the last straw for the employer occurred when the claimant told the employer he "could stick these diesel engines up your ass." Not only was that statement to his boss completely disrespectful but was also inappropriate and unprofessional. Although profanity was common in the workplace there is a difference between using profanity when employees are speaking to each other socially and in using profanity in anger toward the president of the company he worked for.

Under these circumstances, the administrative law judge concludes the claimant's attitude and conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The April 29, 2015, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs