

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN M MOGREN
Claimant

APPEAL NO: 076A-UI-03463-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAIL HOUSE INC
Employer

**OC: 03/04/07 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Brian M. Mogren (claimant) appealed a representative's March 27, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Mail House, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 19, 2007. The claimant participated in the hearing. Chris Shanahan, the president, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 10, 2005. The claimant worked full time as a machine operator. The employer's employee handbook informs employees that profanity at work is not allowed. The claimant does not remember receiving a handbook and there is no documentation verifying he received a handbook. During his employment, the claimant heard profanity at work on a regular basis. Employees swore in fun and when they were angry or upset.

Prior to March 8, 2007, the claimant's job was not in jeopardy. On March 8, an employee brought back a job and threw it at the claimant's work area. The claimant was bar-coding mail and some his mail fell when the employee threw a bundle of work. The claimant told the employee that in the future if she had work for him to do, she needed to ask him to pick it up so his mail did not get knocked over. The employee became upset with the claimant and a few words were exchanged between them. The other employee went back to her work area.

When the claimant and the employee exchanged words, Shanahan was on the phone with a client. The client overheard the angry exchange and made a comment about it to Shanahan. After Shanahan concluded his phone conversation, he confronted the claimant about the verbal

exchange he had with a co-worker. The claimant and Shanahan then engaged in a heated verbal argument. At one point, the claimant told Shanahan that he (the claimant) could not f ---- take this anymore. The two argued some more and the claimant used the f__ word again during the heated exchange. Finally, the employer told the claimant that if he used the F__ word one more time, he was done. The claimant responded, "You mean if I say the F__ word again – are you serious? The employer then informed the claimant he was discharged. The employer discharged the claimant because he used the F__ word after the employer warned him he would be discharged if he did.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts establish the employer confronted the claimant when the employer was upset about a client overhearing an argument between the claimant and a co-worker. Unfortunately, the employer and claimant then engaged in a heated argument. The claimant previously asked the employer to talk to the co-worker who had thrown work at the claimant that day and the employer had not done this. As a result of the employer's inaction the claimant told the employer during the heated confrontation that he (the claimant) he could not f____ take this anymore. The two men exchanged more words. Finally, the employer warned the claimant that if he used the f__ word again, he would be discharged. The claimant did not believe the employer and asked if the employer was f__ serious. The employer proved he was serious when he then discharged the claimant for again uttering the f__ word.

During a heated confrontation, people say things without thinking. This case is a prime example. When the claimant swore, he did not personally direct the profanity toward the employer, but used the word while talking two or three times. After the employer warned the claimant he would be discharged if he said the word one more time, the claimant used poor judgment by asking if the employer was serious. Given the fact the two were still in a heated confrontation, the evidence does not establish that this isolated incident amounts to work-connected misconduct. Therefore, as of March 4, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 27, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of March 4, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs