

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CLARENCE MAYO**

Claimant

**APPEAL NO. 06A-UI-08915-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHUKEI CHEVROLET INC**

Employer

**OC: 08-06-06 R: 02  
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Clarence Mayo filed a timely appeal from an unemployment insurance decision dated August 30, 2006, reference 01, which disqualified him for benefits. After due notice was issued, a hearing was held in Mason City, Iowa on October 23, 2006 with Mr. Mayo participating. Exhibit A was admitted into evidence on his behalf. Service Manager Art Basinger and Service Adviser Roger Pearce participated for the employer, Schukei Chevrolet, Inc. Employer Exhibit One was admitted into evidence.

**ISSUE:**

Was the claimant discharged for misconduct in connection with his employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Clarence Mayo was a longtime employee of Schukei Chevrolet, Inc. at the time of his discharge August 7, 2006. He last worked as a service technician. On Friday, August 4, 2006, Service Adviser Roger Pearce instructed Mr. Mayo to re-drive a U-Haul truck he had been working on because the volt meter flashed off and on intermittently. Mr. Mayo refused to do so. A confrontation ensued in which Mr. Mayo called Mr. Pearce a "fucking punk" or "little son-of-a-bitch."

Mr. Pearce reported the incident to Service Manager Art Basinger after Mr. Mayo had left for the day. Mr. Basinger discharged Mr. Mayo as a result of this incident. In reaching the decision to discharge, Mr. Basinger also considered an incident which had occurred approximately ten days earlier in which Mr. Mayo had told Mr. Basinger to "take this job and shove it up your ass." Mr. Mayo had recently given the employer 90 days' notice of his intention to resign in order to pursue his GPS tracking system private business.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes that Mr. Mayo was discharged for misconduct in connection with his employment. It does.

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).

While Mr. Mayo disputed the exact language he used in addressing Mr. Pearce and Mr. Basinger on the two incidents in question, his own testimony confirms the allegation of profanity and insubordination. Repeated failure to follow reasonable instructions is itself grounds for disqualification. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). Furthermore, threatening or demeaning language addressed to a supervisor of a co-worker is sufficient grounds for disqualification for benefits. See Myers v. Employment Appeal Board, 462 N.W.2d 734, 738 (Iowa App. 1990). Benefits must be withheld.

**DECISION:**

The unemployment insurance decision dated August 30, 2006, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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