

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY R DAVIS

Claimant

APPEAL NO: 13A-UI-02463-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC

Employer

OC: 01/20/13

Claimant: Respondent (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 26, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. Theresa McLaughlin, a human resource generalist, and Gary Jordan, the market manager, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer as a part-time meat counter employee in April 2009. The claimant received a copy of the employer's written policy that informs employees they can be suspended or discharged if they swear in the market.

In mid-May 2012, Jordan gave the claimant a verbal warning for swearing in the market. An employee reported the claimant used profanity when he was in the market. Since the claimant denied he swore and no customer heard him, the employer gave him a warning. On September 14, 2012, the claimant received a written warning for being rude to a customer. The warning occurred after a customer complained about the way the claimant treated or acted toward her. The warning informed the claimant that if there were further problems, he could be discharged.

Jordan did not believe the claimant liked to come out from the back room to help customers when he was asked. On January 14, 2013, an employee, A.L., reported the claimant was swearing in the back room. Two other employees reported that when the manager on duty asked the claimant to pan up some ground beef, the claimant responded by saying, "F____, do it yourself." When he made this comment a customer was on the other side of the counter and

heard the claimant's profanity. Jordan received the employees' reports the next day. Jordan asked the employees to make written statements.

On January 21, Jordan talked to the claimant about his January 14 comments. The claimant denied he swore in the back room or in front of a customer. On January 21, 2013, the employer suspended the claimant for three days. After checking with the human resource department, the Jordan discharged the claimant on January 26, 2013, for swearing at work in front of a customer on January 14, 2013.

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 § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the evidence presented at the hearing, the claimant knew or should have known he was not allowed to swear at work. The evidence indicates on January 14, the claimant swore in front of a customer when a manager asked him to pan up some ground beef. The claimant's January 14 conduct after he had been warned about swearing before amounts to work-connected misconduct. As of January 20, 2013, the claimant is not qualified to receive benefits.

DECISION:

The representative's February 26, 2013 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 20, 2013. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs