

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**PAMELA DAVIS
APT 7-B
1958 BROADWAY
IOWA CITY IA 52240**

**LABOR READY MIDWEST INC
ATTN-PAYROLL TAX DEPT
PO BOX 2910
TACOMA WA 98401 2910**

**Appeal Number: 06A-UI-00105-H2T
OC: 11-20-05 R: 03
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 29, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 19, 2006. The claimant did participate along with her witness, Mary Anderson, cousin of the claimant. The employer did participate through Dixie Derby, Branch Manager, and Jamie Hunt, Customer Service Representative. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a temporary worker beginning November 15, 2005 through

November 15, 2005, when she was discharged for using profanity and threatening other employees of the employer.

The claimant came into the employer's office around 5:30 p.m. to pick up her paycheck. She picked up her paycheck, which was for \$7.00. The claimant was unhappy with her rate of pay and complained to Ms. Hunt. The claimant was told by Ms. Hunt that she would have to come in the next day and to speak to Ms. Derby the branch manager about the rate of pay. The claimant became so angry she then said to Ms. Hunt that "she was going to beat her motherfucking ass." When the claimant made the profane threatening comment to Ms. Hunt, she was on the phone with Ms. Derby. Ms. Derby heard the claimant threaten Ms. Hunt.

Ms Hunt was upset that the claimant had threatened her and asked her to leave. The claimant would not leave, so Ms. Hunt called the police to escort her off the grounds. The police escorted the claimant off the premises.

The claimant called later in the month of December and again when speaking to Ms. Derby made a threat against Ms. Hunt.

The claimant's witness alleged that both Ms. Hunt and the claimant used profanity.

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 use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made.” Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990).

The administrative law judge is persuaded that the claimant used profanity in speaking to Ms. Hunt as well as threatening her. Additionally, the claimant called later in the month of December and again made a threatening remark against Ms. Hunt. The verbal aggression by the claimant was in violation of specific work rules and against commonly known acceptable standards of work behavior. Threatening a coworker and using profanity when speaking to the employer is sufficient misconduct to disqualify the claimant from receiving unemployment insurance benefits.

DECISION:

The December 29, 2005, reference 01, 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.

tkh/kjw