

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORRI A FRENCH**  
Claimant

**APPEAL NO. 09A-UI-16869-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**M G LAUNDRY CORP**  
Employer

**Original Claim: 10-04-09  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 27, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 15, 2009. The claimant did participate along with her witness, Vicky Harms. The employer did participate through Gary Karsten, President.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a laundry worker, full-time (thirty hours per week), beginning August 10, 1995 through October 8, 2009, when she was discharged.

On September 29 Mr. Karsten told the claimant and another worker, Vicky Harms, that he wanted them to take their breaks in two fifteen-minute periods and to have their breaks completed by noon each day so that the claimant would have at least two hours per day to spend working on ironing the large table cloths on the mangle. On Friday, October 2, Mr. Karsten noted that both the claimant and Ms. Harms had taken a twenty-three minute break in contravention to his instructions. He checked their time cards again on Monday, October 5, and noted again that each of them had taken a break longer than fifteen minutes and that the claimant had not spent any time ironing the large table cloths on the mangle that day. On Tuesday, October 6, Mr. Karsten suspended the claimant for one day without pay for not following his instructions regarding breaks and for not spending any time ironing the large table cloths on the mangle. The claimant was warned that any further infraction would lead to her discharge. On that same date, Mr. Karsten told Ms. Harms that if she violated the break rules again, she too would be discharged.

Around the fall of 2008 the employer had installed a surveillance camera system that let him view the workplace from a remote location. All of the employees, including the claimant, knew that Mr. Karsten and his wife were the only two people who could view either the taped footage

from the camera or the live action it was recording. The claimant returned to work on October 7 and Mr. Karsten reviewed her work later that afternoon. He discovered that on October 7 the claimant walked up to the camera flipped it the bird and said, "Fuck you Gary." Mr. Karsten showed the footage to other employees, including Ms. Harms, who confirmed at hearing that the claimant had flipped off the camera and uttered the profanity toward Mr. Karsten. At hearing, the claimant admitted flipping the camera off but did not recall whether she had uttered any profanity toward Mr. Karsten. The claimant flipped off the camera on two separate occasions on October 7 knowing that it was only Mr. Karsten or Mrs. Karsten who had the authority and ability to watch the tape.

While the occasional use of profanity is allowed in the workplace, no employee expects Mr. or Mrs. Karsten to swear at or curse at them. The claimant knew she was not allowed to tell the owner, Mr. Karsten, to "fuck off."

### **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.

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.

"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 did flip off the camera and did tell Mr. Karsten to “fuck off.” She did so knowing that he would be the one to watch the surveillance tape and because she was angry about her discipline. Such behavior is sufficient misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

**DECISION:**

The October 27, 2009, 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw