

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL L VANZANDT
Claimant

APPEAL NO. 08A-UI-08284-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROWN TRUCK LEASING CORPORATION
Employer

**OC: 09/16/07 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Paul L. VanZandt (claimant) appealed a representative's September 12, 2008 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Brown Truck Leasing Corporation (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on October 1, 2008. The claimant participated in the hearing. David Poole appeared on the employer's behalf and presented testimony from one other witness, Matt Luchterhand. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 28, 2005. He worked part time (approximately 30 hours per week) as a fuel island and wash attendant at the employer's facility providing services to trucks leased to drivers working for an affiliated transportation company. His last day of work was August 8, 2008. The employer discharged him on that date. The stated reason for the discharge was making a racial slur against a driver from the affiliated company.

Although the employer alleged this occurred on two sequential days, the claimant admitted only to one instance, on or about August 6, when he made a comment to one of the truck drivers. The driver was a male Native American, and the claimant called him "squaw," telling him to go ahead and start pumping the gas himself. "Squaw" is used as a derogatory reference to a female Native American. The driver complained about this to the affiliated company and quit.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code

§ 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Even if the claimant might have been unaware of the employer's policies against racial harassment, he reasonably knew or should have known that calling a male Native American by a term that is commonly understood as offensive both to the driver's ethnicity and gender would be likely cause problems, such as potentially provoking a physical altercation. The claimant's extreme lack of good judgment is more than simple negligence and shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's September 12, 2008 decision (reference 02) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 8, 2008. This disqualification continues until the claimant 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css