

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TIMOTHY A HASLER
Claimant

APPEAL NO. 18A-UI-12417-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEABOARD TRIUMPH FOODS LLC
Employer

OC: 12/09/18
Claimant: Appellant (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Timothy Hasler filed a timely appeal from the December 26, 2018, reference 01, decision that held he was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Hasler was discharged on December 6, 2018 for using profanity on the job. After due notice was issued, a hearing was held on January 14, 2019. Mr. Hasler participated. The employer did not comply with the hearing notice instructions to register a telephone number for the appeal hearing and did not participate.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Timothy Hasler was employed by Seaboard Triumph Foods, L.L.C. as full-time machine operator from March 2018 until December 6, 2018, when the employer discharged him for uttering profanity in the workplace. About a month before the discharge, the employer issued a "final" written warning to Mr. Hasler for using profanity in the workplace. This happened after Mr. Hasler called a female coworker a bitch. The final conduct that triggered the discharge occurred on December 6, 2018. On that day, Mr. Hasler had to use the restroom at the time his shift was scheduled to start and ended up reporting to his work area four minutes late. Mr. Hasler's new supervisor, Alonzo, chastised Mr. Hasler for reporting to the work area late and stated that he did not care why Mr. Hasler was late. As Mr. Hasler walked away after speaking with the supervisor, Mr. Hasler turned a corner and then audibly stated, "Fuck you." The supervisor heard the utterance and confronted Mr. Hasler about the utterance. The supervisor escorted Mr. Hasler to the human resources department, but the human resources department was not yet open. Mr. Hasler asked Alonzo to summon Rodney, a higher ranking supervisor. Rodney came to the area and had Mr. Hasler and Alonzo accompany him to his office. Once in Rodney's office, there was further discussion regarding Mr. Hasler's late arrival and profane utterance. At one point, Mr. Hasler became frustrated, began to walk away, and stated, "Fuck it." Once the human resources personnel arrived, a human resources representative took control of the matter and notified Mr. Hasler that he was discharged from the employment for

uttering profanity in the workplace. The culture of the workplace was such that profanity was often used by machine operators and foremen on the production floor.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. *Deever v. Hawkeye Window Cleaning, Inc.*, 447 N.W.2d 418 (Iowa Ct. App. 1989).

Despite the employer's failure to participate in the appeal hearing, the evidence in the record establishes a discharge based on misconduct in connection with the employment. The employer's issuance of a written reprimand for use of profanity indicates that however much employees used profanity on the production floor, such conduct was not endorsed by the employer. With that prior reprimand, the employer had put Mr. Hasler on notice that he would be discharged if he again used profanity at work. The written reprimand was based on Mr. Hasler directing a profane, offensive epithet at a female coworker. The final conduct that triggered the discharge included a patently offensive utterance directed at Mr. Hasler's supervisor. The weight of the evidence indicates the utterance was made within earshot of the supervisor, which explains why the supervisor quickly returned to confront Mr. Hasler about the utterance. The particular utterance undermined the authority of the supervisor. This second incident was enough to establish misconduct in connection with the employment. Mr. Hasler made matters worse when he elected to employ profanity again during the meeting with Rodney. Each of these three utterances demonstrated a disregard for the employer's interest in maintaining a civil work environment. The fact that there were three such utterances, and that the last two followed a prior written warning for similar conduct, indicates substantial disregard for the employer's interests. Mr. Hasler is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Hasler must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The December 26, 2018, reference 01, decision is affirmed. The claimant was discharged on December 6, 2018 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs