

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTHONY J MILLER
Claimant

ADDOCO INC
Employer

APPEAL 22A-UI-07972-DS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/27/22
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

On March 21, 2022, Anthony Miller (claimant/appellant) filed an appeal from the March 16, 2022, reference 01, unemployment insurance decision that denied benefits based upon the determination that he was discharged from the employment for insubordination. The parties were properly notified about the hearing held by telephone on May 11, 2022. The claimant participated. The employer did not participate. The administrative law judge took notice of the administrative record.

ISSUE:

Did the employer discharge the claimant for job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time as a Forklift Driver beginning on June 6, 2017, and was separated from employment on February 22, 2022. His direct supervisor was Bill Peterson. The claimant's work involved driving a loader at the worksite.

On February 22, 2022, the claimant was involved in a conflict with his supervisor. The claimant had been advised for at least two weeks prior to the February 22, 2022 incident that he could no longer carry a backpack on the worksite. There was no work rule in place regarding backpacks, however, the claimant was aware that his employer expected him to stop carrying one when operating the employer's equipment. The final incident occurred when the claimant's supervisor confronted him about continuing to carry a backpack at the worksite. The claimant then called the supervisor a "piece of shit." The claimant's supervisor told him he was terminated at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related misconduct. Benefits are denied.

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 provides, in relevant part:

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...

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 establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). "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. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990).

The use of profanity or offensive language is not automatically disqualifying for unemployment insurance benefits purposes. However, 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). Profane language 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, 421 (Iowa Ct. App. 1989).

In this case, the claimant admits that he not only used profanity in the workplace, but he used it directly toward his supervisor in the context of name-calling. The claimant's language toward his supervisor was confrontational, disrespectful and intended to be perceived as an insult. It was sufficiently substantial as to be ground for disqualification as misconduct in the context of the claimant's employment. Benefits are denied.

DECISION:

The March 16, 2022, Reference 01, unemployment insurance decision is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided he is otherwise eligible.



David J. Steen
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June 14, 2022
Decision Dated and Mailed

djs/kmj