

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

JARED J VANLENGEN

Claimant

APPEAL 23A-UI-05144-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY

Employer

OC: 04/16/23

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge from Employment

STATEMENT OF THE CASE:

On May 17, 2023, claimant Jared J. Vanlengen filed an appeal from the May 9, 2023 (reference 01) unemployment insurance decision that denied benefits based on a determination that he was discharged from Casey's Marketing Company on April 13, 2023 for engaging in conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Tuesday, June 6, 2023. Claimant Jared J. Vanlengen participated. Employer Casey's Marketing Company did not appear for the hearing. The administrative law judge took official notice of the administrative record.

ISSUE:

Whether the claimant's separation was a discharge for disqualifying, job-related misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer in November 2022. Most recently, he worked part-time hours as a team member performing cashier duties. Claimant's employment ended on April 13, 2023, when the employer discharged him due to an incident that occurred on April 11, 2023.

On April 11, the store experienced a significant rush of customers when claimant was working at his register. During this time, a female customer came to claimant's register who had two children with her, and all three had items that they wanted to purchase individually. The woman explained she wanted to teach her children how to handle money by having them making their own purchases. Claimant asked the woman to pay for all of the items herself, due to the long line of customers behind her and the time it would save to have her handle everything herself. The woman then became "belligerent," threatening to never come to the store and to tell everyone she knew that Casey's was a terrible place. Claimant then relented and allowed the woman and her children to each purchase their items individually. After the purchase had completed, claimant heard the woman mutter something about him as she walked away from the register. He called out to her, "The world does not revolve around you!" The woman left the store angry.

After the rush of customers had dissipated, a man came through claimant's line. He asked the claimant if he had told a woman earlier that the world did not revolve around her. The claimant told the man, "Please do not get into it," and explained that was a matter between him and the customer. The man replied that it was his business because the woman was his wife. He then stated that the claimant should apologize to the woman. Claimant became anxious and felt like the man was bullying him. There were customers behind the man, and his coworker was also helping customers and could not step in and assist claimant. Claimant tried to just brush off the man and get through the sale so the man would leave. As the man walked out of the store, the claimant raised his hand up and flipped off the man with his middle finger. Both the man and claimant's coworker saw claimant do this. Claimant's coworker immediately recommended that he go home for the remainder of the shift, which he did. When he returned to work the following day, the employer discharged him. Claimant had never been disciplined for any issues.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code section 96.5(2) and (d) 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:

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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 even 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...

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).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits.

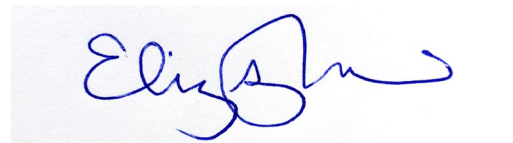
“The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context, may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made. The question of whether the use of improper language in the workplace is misconduct is nearly always a fact question. It must be considered with other relevant factors, including the context in which it is said, and the general work environment.” *Myers v. Emp’t Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990).

Every employer is entitled to expect civility and decency 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.” *Henecke v. Iowa Dep’t of Job Serv.*, 533 N.W.2d 573, 576 (Iowa App. 1995) (internal citation omitted). However, the use of profanity or offensive language is not automatically disqualifying for unemployment insurance benefits purposes. The “question of whether the use of improper language in the workplace is misconduct is nearly always a fact question... [and] must be considered with other relevant factors...” *Myers v. Employment Appeal Board*, 462 N.W.2d 734, 738 (Iowa App. 1990). A recent Employment Appeal Board decision set forth six aggravating factors to be considered when examining an employee’s use of improper language: “(1) cursing in front of customers, vendors, or other third parties; (2) undermining a supervisor’s authority; (3) threats of violence; (4) threats of future misbehavior or insubordination; (5) repeated incidents of vulgarity; and (6) discriminatory context.” Emp. App. Bd. Hrg. No. 16B-UI-08787, at *3 (Emp. App. Bd. pub. Oct. 21, 2016) (citing cases). The Employment Appeal Board also suggests that the general work environment is a relevant consideration in analyzing profanity. *Id.*

Here, the final incident leading to claimant’s discharge involved the claimant chastising a rude customer, and then a second customer confronting him about the way he spoke to the first customer. Claimant used poor judgment both in telling the female customer that the world did not revolve around her and, certainly, in flipping off the male customer. However, claimant’s behavior was not so egregious or abhorrent that he could not be coached into making better decisions when dealing with the public, particularly when under stress. This final incident on April 11 was an isolated incident of poor judgment that claimant regrets and does not seem inclined to repeat. Benefits are allowed.

DECISION:

The May 9, 2023 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Elizabeth A. Johnson
Administrative Law Judge

June 12, 2023
Decision Dated and Mailed

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.