

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RHONDA L COWELL
Claimant

APPEAL NO. 08A-UI-04342-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

METAL WORKS INC
Employer

**OC: 04/06/08 R: 1
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Rhonda Cowell, filed an appeal from a decision dated April 23, 2008, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 20, 2008. The claimant participated on her own behalf and was represented by Steve Hamilton. The employer, Metal Works, participated by Owner Bruce Nystrom, Shop Foreman James Ransom, and Assembly Foreman Mark Dean.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Rhonda Cowell was employed by Metal Works from August 7, 2006 until April 3, 2008, as a full-time assembler. She received a copy of the employee handbook, which sets out the grounds for which a person may be discharged. Included is "insubordination to supervisors, verbal or physical abuse of management, supervisors or customers."

On April 1, 2008, toward the end of the shift, Assembly Foreman Mark Dean told the claimant she had to finish up her project before the end of the shift. She said to him, "Fuck off and get a fucking life." Mr. Dean reported this to Operations Manager Angie York, who discussed the incident with Owner Bruce Nystrom. The decision was made to discharge the claimant and Ms. York informed her of the termination on April 3, 2008, when she returned to work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 claimant admits to telling her supervisor to "fuck off and get a fucking life" on the production floor. While bad language may not be unusual in this work setting, there is a distinct difference between using bad language as an exclamation of pain or frustration, and an entirely different matter to abuse a supervisor who was only asking an employee to finish her assigned task.

Ms. Cowell indicated she was taking various medications for pain and depression but has failed to establish how any of them could have caused her to use such abusive language to a supervisor. "Mood swings" and "anxiety" are not causes of profane language. Abusive language addressed to a supervisor is considered misconduct. Warrell v. IDJS, 356 N.W.2d 587 (Iowa App. 1984). The claimant was discharged for conduct not in the best interests of the employer and she is disqualified.

DECISION:

The representative's decision of April 23, 2008, reference 01, is affirmed. Rhonda Cowell is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw