

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN J STEAHR
Claimant

APPEAL NO. 12A-UI-15046-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TSI ENTERPRISES INC
Employer

**OC: 11/18/12
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 13, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 8, 2013. The claimant did participate. The employer did participate through Sarah Fiedler, Account Manager. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was last assigned to work at Grain Processing Corporation as a crew leader full time beginning on April 1, 2011 through November 16, 2012 when he was discharged. On November 15 the claimant made a comment to more than one of his coworker referring to the recently re-elected President of the United States as a "n*gger." The comment was overheard by more than one of his coworkers. The claimant and all of his coworkers had been previously warned that such racist comments were absolutely prohibited in the workplace. Even if the claimant and all his coworkers got together and agreed that using such words was not offensive to them, the employer still has a right to expect them to refrain from vile language. During a meeting with his employer the claimant admitted that he used the word "n*gger" to refer to African Americans. At hearing the claimant admitted that he used the "n" word while at work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa 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 App. 1990).

The claimant knew or should have known that using racial offensive words was not prohibited. It does not matter why his coworkers turned him in. He used the offensive language in direct contradiction to the employer's explicit instructions. His actions are sufficient misconduct to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The December 13, 2012 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has

worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/tll