

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT R VANDERPOOL
Claimant

APPEAL NO. 11A-UI-09059-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNIPARTS OLSEN INC
Employer

**OC: 06/05/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 7, 2011, reference 01, that held he was discharged for misconduct on June 5, 2011, and which denied benefits. A telephone hearing was held on August 2, 2011. The claimant participated. Stephanie Bergman, HR Coordinator, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment as a full-time machine operator on October 21, 2010, and last worked for the employer on June 4, 2011. The claimant received an employee handbook that contained the policies of the employer. The policy prohibits an employee from making any verbal, graphic, or written discriminatory statement.

On May 29, claimant was wearing a t-shirt with a white pride message. His supervisor requested he turn the shirt inside out to hide message. Claimant initially complied, but after his supervisor left, he turned the t-shirt back to display the white pride message. Sometime later, when the supervisor saw what claimant had done, he sent him home with a verbal warning reduced to writing that claimant refused to sign. On May, 31, HR Bergman gave claimant a copy of the verbal warning, because he refused to sign for it.

On June 4, claimant was observed by co-workers following an African-American employee, who is the individual that complained to the employer about the white pride t-shirt, into a restroom. Claimant made snide comments and smirked at the employee and slammed a door as a measure of taunting. The employee complained to HR Bergman about the incident and she obtained written statements from co-workers that corroborated the complaint. Claimant denied

the incident. The employer discharged claimant on June 5 for a second discrimination policy violation in light of the prior warning.

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on June 5, 2011, for a repeated violation of company discrimination/harassment policy.

The claimant knew the employer's discrimination/harassment policy due to a prior warning, and his repeated violation for the same offense constitutes job disqualifying misconduct. Claimant admitted his white pride t-shirt message was discriminatory by complying with his supervisor's request and then committed an act of insubordination by reversing and displaying the message. He compounded his acts of misconduct by refusing to sign for the verbal warning. Less than one week later, he pursued the complainant with harassment by his acts and verbal remarks, which is a further violation of policy.

DECISION:

The department decision dated July 7, 2011, reference 01, is affirmed. The claimant was discharged for misconduct on June 5, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw