

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT T GUALCO
Claimant

HOLDAHL INC
Employer

APPEAL NO: 12A-UI-06654-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/13/12
Claimant: Appellant (2)

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 May 31, 2012, reference 01, that held he was discharged for misconduct on May 11, 2012, and benefits are denied. A telephone hearing was held on June 28, 2012. The claimant participated. Dan Lachowitzer, Manager, and Rhonda Pantilla, Unemployment Manager, participated for the employer. Claimant Exhibits A & B were received as evidence.

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 CSR and warehouse laborer on October 4, 2010, and last worked for the employer on May 11, 2012. The claimant received an employee handbook that contained the policies of the employer.

Claimant's manager works from an Omaha location while claimant works in Des Moines. He received a report from a female worker about a confrontation with claimant the day before. She reported claimant say this is "un-fucking believable" while in her presence. After a discussion with a company VP about the incident, the manager was advised to discharge claimant but give him the option of resigning with two week severance and no contest to unemployment. Claimant declined the option to resign when told he was discharged.

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 failed to establish claimant was discharged for misconduct in connection with employment on May 11, 2012, for violation of a company policy.

There is no evidence claimant had been issued any written discipline for previous conduct of a similar nature. Claimant denies threatening the female worker though he admits using profanity in her presence. While claimant demonstrated inappropriate behavior it is an isolated incident in a warehouse setting where such language might occasionally be heard. Job disqualifying misconduct is not established.

DECISION:

The department decision dated May 31, 2012, reference 01, is reversed. The claimant was not discharged for misconduct on May 11, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs