

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**GREG A STEWARD
12005 QUAIL AVE
STOCKPORT IA 52561**

**BOVARD STUDIO INC
2281 HWY 34 E
FAIRFIELD IA 52556-8560**

**Appeal Number: 04A-UI-12635-RT
OC: 10-24-04 R: 03
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Greg A. Steward, filed a timely appeal from an unemployment insurance decision dated November 15, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on December 17, 2004 with the claimant participating. Robert Greco, President, and Bruce Oviatt, Human Resources Manager, participated in the hearing for the employer, Bovard Studio, Inc. Employer's Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time warehouse supervisor from February 5, 2001 until he was discharged on October 22, 2004. The claimant was discharged for insubordination and creating a hostile work environment and, in particular, the language he used directed at other employees, especially managers. The discharge arises from three incidents, two on October 21, 2004 and the final one on October 22, 2004. On October 21, 2004, while working with a female manager, Libby Loescher, he became frustrated with what he believed was an overload of work and used profanity. It was not directed at her but, nevertheless, he used profanity in her presence. Also, on October 21, 2004, when asked by the Manager of Field Operations, Clint Kobelt, about some storm windows which the claimant was supposed to have ordered, the claimant became frustrated and told Mr. Kobelt that he could "shove these papers up your ass." The claimant was not discharged for his failure to order the storm windows as instructed but rather his response when asked about it. Finally, on October 22, 2004, while Robert Greco, President, was in the warehouse talking to Dan Minert, Field Crew Leader, the claimant went into an unprovoked tirade about his work stating that he did not have time to do this "shit" and that he was tired of doing everyone else's "fucking" work. The claimant was only six feet from Mr. Greco when he made these comments.

The employer has policies in its handbook, a copy of which the claimant received and for which he signed an acknowledgement, prohibiting boisterous and disruptive behavior. The claimant had been warned about this behavior in a performance appraisal in June 2004 as shown at Employer's Exhibit One. The claimant had also received verbal warnings about his temper and his language. After reviewing the three incidents, the claimant was discharged. The employer did provide the claimant with help in the warehouse although it was not full time. When the claimant needed help, it was provided. Pursuant to his claim for unemployment insurance benefits filed effective October 24, 2004, the claimant has received no unemployment insurance benefits but Workforce Development records show that the claimant is overpaid unemployment insurance benefits in the amount of \$279.27 for 2000.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties agree, and the administrative law judge concludes, that the claimant was discharged on October 22, 2004. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witnesses credibly testified that on two occasions on October 21, 2004 and one occasion on October 22, 2004, the claimant swore at managers and became angry and let his temper get the best of him. On at least one occasion, profanity was specifically directed to a manager, Clint Kobelt, Manager of Field Operations. The employer's witnesses also testified that the employer has a policy in its handbook, a copy of which the claimant received and for which he signed an acknowledgement, prohibiting boisterous or disruptive behavior. The claimant concedes that he used the profanity as set out in the findings of fact. The claimant testified that he did not direct the profanity at Libby Loescher on October 21, 2004 nor did he direct it at Dan Minert and Robert Greco, President and one of the employer's witnesses, on October 27, 2004. However, from the language testified to by the employer's witnesses and admitted to by the claimant, the claimant did direct profanity and his temper at Mr. Kobelt on October 21, 2004. The evidence further establishes that the claimant had a temper problem and a profanity problem and that he had received verbal warnings about this as well as comments in his performance appraisal in June 2004 as shown at Employer's Exhibit One. Accordingly, the administrative law judge concludes that the claimant's temper tantrums and profanity were deliberate acts constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evince a willful or wanton disregard of the employer's interests and, at the very least, are carelessness or negligence in such a degree of recurrence, all as to establish disqualifying misconduct.

In Myers v. Employment Appeal Board, 462 N.W.2d 734, 738 (Iowa App. 1990), the Iowa Court of Appeals held that 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. Here, the claimant's use of profanity was disrespectful and, at least in one case, definitely

confrontational and name-calling even if, on two occasions, the target of the abusive name-calling was not present. The administrative law judge notes that, at least on one occasion, the target was present and the language was directed at him. The claimant seemed to justify his language by stating that he was overworked and that the language was common. The administrative law judge is not convinced that the language was common and, in any event, the claimant used the language in the presence of managers and, at least on one occasion, directed it at a manager and was loud and angry at the same time. The administrative law judge does not believe that being overworked or believing that one is overworked justifies such outbursts and such profanity. In fact, there is evidence that the claimant was provided significant assistance even though it was not full time.

In summary, and for all the reasons set out above, the administrative law judge concludes that claimant's actions were disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of November 15, 2004, reference 01, is affirmed. The claimant, Greg A. Steward, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct. Although the claimant has received no unemployment insurance benefits following his separation from the employer herein, records show that he is overpaid unemployment insurance benefits in the amount of \$279.27.

tjc/tjc