

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: Brandon A. Banker was employed as a machine operator by Eagle Window and Door, Inc. from June 13, 2005 until he was discharged July 21, 2005. Mr. Banker was accused of calling a co-worker a “fucking cunt.” He did not do so.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with his work. It does not.

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 employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incidence leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8).

The employer's evidence consisted entirely of hearsay testimony. Ms. Turner did not observe the incident or investigate it. Mr. Banker denied under oath, subject to questioning by the administrative law judge and cross-examination by the employer, making the comment. The employer's hearsay evidence is not sufficient to rebut the claimant's sworn denial. No disqualification may be imposed based upon the evidence in this record.

DECISION:

The unemployment insurance decision dated September 26, 2005, reference 02, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

dj/kjw