

**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**

**DALE WHITE
4408 ZIRCON LN #138
CEDAR FALLS IA 50613**

**WILBER AUTO BODY & SALES INC
212 W 9th
WATERLOO IA 50702**

**Appeal Number: 04A-UI-03669-E
OC: 03-07-04 R: 03
Claimant: Respondent (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/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 30, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on June 21, 2004. The claimant participated in the hearing. Tony Wilbur, Owner, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time auto body repairman for Wilber Auto Body & Sales from

August 1996 to February 12, 2004. On February 3, 2004, the claimant had a misunderstanding with Owner Tony Wilbur and when Mr. Wilbur became angry and questioned him further, the claimant said he “wasn’t talking about the car, I was talking about the fucking van.” A few days later Mr. Wilbur said he “did not appreciate” the claimant’s language and it made him “feel two inches tall.” On February 12, 2004, the claimant was working on an unusual door handle and showed Mr. Wilbur because he was having trouble with it. Mr. Wilbur said he would get a handle from another car and the claimant testified Mr. Wilbur’s comments and demeanor made him “feel like a dummy.” The parties were both upset and when they went to the office area they argued and the claimant’s frustration “boiled over” and he said, “fuck you” to Mr. Wilbur. Mr. Wilbur asked him what he said and the claimant repeated the statement. Mr. Wilbur then said if the claimant did not like it and was going to talk that way he should get out. The claimant went to get his tools and Mr. Wilbur followed him, repeating, “fuck you” several times. The claimant received one unrelated warning March 26, 2003. He did not receive any warnings for the use of profanity and it was not uncommon for profanity to be used on the premises.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). While the claimant acknowledges his behavior in using profanity toward Mr. Wilbur February 12, 2004, was inappropriate and unprofessional, it came during a moment of frustration and the use of profanity was not uncommon in the shop. An individual who said "fuck you" to a supervisor in a kitchen where vulgar language had been commonly used in the past was not guilty of job misconduct due to this isolated instance even after a prior reprimand. Parkhurst v. IDJS, (Unpublished, Iowa App. 1986). Misconduct must be substantial in nature to support a disqualification from unemployment benefits. Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. Id. Although not condoning the claimant's behavior, the administrative law judge concludes that the claimant's actions in this case do not rise to the level of disqualifying job misconduct. Consequently, benefits are allowed.

DECISION:

The March 30, 2004, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/tjc