

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY A TIMMERMAN
Claimant

APPEAL NO: 13A-UI-14137-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN ORDNANCE LLC
Employer

OC: 07/07/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 17, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated at the January 16 hearing. Paul Woodrow, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2007. She worked as a full-time production employee. One of the employer's rules informs employees the employer does not tolerate racial slurs at work.

Before November 20, the claimant's job was not in jeopardy. On or about the claimant was very upset and mad at another employee. When the claimant was upset at this employee, she made a comment, "I'm sick of the lazy n---- b___." The employee she made the comment about was not present. The person who heard the remark, K.B., is white but reported the claimant's comment to management.

When the employer talked to the claimant about her reported comment, she did not admit she made the comment but acknowledged she was mad enough to say it. The employee the claimant was upset with had been calling the claimant a bitch.

On November 20, the employer discharged the claimant for the comment she made because she violated the employer's policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Even though the claimant was mad and very upset, she violated the employer's policy when she made an offensive racial comment loud enough for another person to hear. Since K.B. reported the comment, it is not known if the comment offended her or she knew the comment violated the employer's policy. Even though this was an isolated comment, it is so offensive and inappropriate that the claimant committed work-connected misconduct when she made the comment loud enough for others to hear. As of December 1, 2013, the claimant is not qualified to receive benefits.

DECISION:

The representative's December 17, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for an incident that amounts to work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 1, 2013. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css