

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVEN L VONTHUN
Claimant

SECURITAS SECURITY SERVICES USA
Employer

APPEAL 23A-UI-07200-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/11/23
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge from Employment

STATEMENT OF THE CASE:

On July 19, 2023, claimant Steven L. Vonthun filed an appeal from the July 14, 2023 (reference 01) unemployment insurance decision that denied benefits based on a determination that he was discharged from Securitas Security Services USA on May 28, 2023 for using profane language. The parties were properly notified of the hearing. A telephonic hearing was held at 11:00 a.m. on Tuesday, August 8, 2023. Claimant Steven L. Vonthun participated. Employer Securitas Security Services USA participated through testimony of witness Alisha Matzen, HR Manager; and was represented by hearing representative Brad Sartin of Equifax. No exhibits were admitted.

ISSUE:

Whether the claimant's separation from employment was a discharge for disqualifying, job-related misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer on November 10, 2015. Most recently, he worked full-time hours as third-shift security officer assigned at the Clinton Nestle Purina ("Client") site. The Client moves a lot of freight out of its facility and has a lot of truck drivers of diverse races and national origins passing through, hauling loads of freight. Claimant's job involved interacting with both the truck drivers and the Client's employees. Claimant was suspended from working on May 29, 2023 and was subsequently discharged on June 22, 2023.

On May 27, 2023, a Client supervisor brought claimant some paperwork. Claimant replied with profanity, asking him, "What the f&#\$ is this?" Do you have a bunch of retards working over there? Are you f&#\$ing kidding me?" Claimant also insulted the Client's employees, describing them as "foreigners" and indicating they were unable to perform their jobs properly. After this interaction, the Client supervisor reported this incident to Securitas, claimant's employer. Securitas determined it would suspend claimant and fully investigate the incident.

Claimant's supervisor, Hannah Doyle, contacted him on May 29 to inform him of the suspension. She explained to claimant that he was being suspended based on a report from a Nestle Purina supervisor and then asked if he had any idea what was going on. Claimant told Doyle he did not like "foreigners" because they did not speak English. He also said, "I don't recall calling anyone retarded, but that's true too." Doyle relayed these comments back to management and HR.

On June 1, Matzen called and spoke with claimant. She reviewed the May 27 incident with him, reaffirming that he was suspended and notifying him that his employment would be reviewed for potential termination. Claimant told Matzen that some of his offensive language was brought out by stress. He admitted calling people "retarded" but said it was not "aimed at anyone." He also recalled reviewing a trucker's logs and commenting, "Judging by the name it's probably a 'foreigner;' some nationalities aren't good drivers." Claimant also told Matzen he has said derogatory things in the past that he should not have said, but his position is stressful, he works third shift, and he was likely not in the right state of mind.

After Matzen spoke with claimant, she prepared a formal termination request and submitted it to her manager. He then submitted it to a higher-level committee for approval. Claimant was discharged on June 22, 2023. Matzen recommended claimant's discharge due to his violation of multiple policies and his derogatory, discriminatory statements. The employer maintains policies prohibiting discrimination, harassment, disruptive conversations on site, and derogatory behavior at work. Claimant was aware his comments and behavior on May 27 could lead to the end of his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant was discharged for disqualifying misconduct. Benefits are withheld.

Iowa Code section 96.5(2)(a) and (d) provide:

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 disqualification shall continue 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.

...

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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 even 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. Misconduct by an individual includes but is not limited to all of the following: ...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer...

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

"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 when the vulgar statements are initially made. The question of whether the use of improper language in the workplace is misconduct is nearly always a fact question. It must be considered with other relevant factors, including the context in which it is said, and the general work environment." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Vulgar language in front of customers can constitute misconduct, *Zeches v. Iowa Dep't of Job Serv.*, 333 N.W.2d 735, 736 (Iowa Ct. App. 1983), as well as vulgarities accompanied with a refusal to obey supervisors. *Warrell v. Iowa Dep't of Job Serv.*, 356 N.W.2d 587, 589 (Iowa Ct. App. 1984).

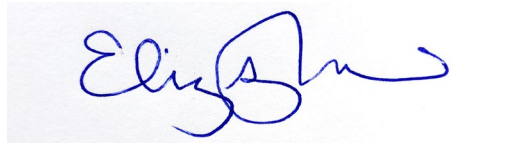
It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find Matzen's testimony credible and believe that claimant made xenophobic comments about workers who had immigrated to the United States, workers whose national origins were different from his, and workers who spoke languages other than English in the workplace. Matzen interviewed claimant personally, and she spoke directly another individual who interviewed him as well. Claimant's blanket denial was not believable in light of Matzen's detailed, nuanced testimony.

The final incident leading to the end of claimant's employment involved claimant using profanity, ableist slurs, and xenophobic insults toward fellow workers at his jobsite. Claimant was aware that the sort of language he used could jeopardize his employment. The comments claimant made were not just hateful and offensive. These comments are destructive to individual and team morale, they could easily spark a confrontation with a coworker, and the employer continuing to employ an individual who openly uses such language could expose them to significant liability in a hostile work environment action. The employer has established claimant was discharged for disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The July 14, 2023 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Elizabeth A. Johnson
Administrative Law Judge

August 9, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.