

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**OSCAR D WEST**  
Claimant

**WHIRLPOOL CORPORATION**  
Employer

**APPEAL 14A-UI-07664-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/22/13**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 18, 2014 (reference 04) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on August 18, 2014. Claimant participated. Employer participated through David Ross, Human Resource/Labor Relations Manager. Since claimant did not receive the proposed exhibits, they were not included in the hearing record.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a production worker (janitor/machine operator) and was separated from employment on May 30, 2014. His last day of work was May 23, 2014. On that date, claimant reported early and was on the production floor talking to another employee who was working. Employees with long hair must have their hair pulled up so it does not get caught in machinery. Supervisor Chris Seaton approached and asked claimant, who has long hair, to put his hair up. He did not and questioned why he should. Seaton told him it is the company's policy. Claimant debated with Seaton and walked away. Seaton contacted supervisor Tim Moore, found the claimant, instructed him again to put up his hair, and claimant refused again saying he did not need to do so. Moore took him to Human Resources to meet with Ross where claimant ignored the conversation, slouched in the chair, and looked out the window. Ross discussed the policy requirement and claimant told him he did not need to follow that policy while he was not on the clock. Ross told him he must follow that rule in the production area and gave him a three-day suspension for violation of safety rules and refusing to follow a supervisor's request. Seaton took claimant to his locker. On the way claimant told Seaton to tell the "snitch bitch," referring to the union supervisor who may have seen him on the floor earlier, "thank you for getting me in trouble." At that point Seaton terminated the employment.

The union closed the grievance without going to arbitration. The employer has disciplined other employees for violating the same rule. A female employee was suspended within a couple of days of the incident but was allowed to continue working since she followed the supervisor's directive and put her hair up while on the production floor.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). "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." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990).

The employer has presented substantial and credible evidence that claimant repeatedly refused to follow a company safety rule. The employer's request was not unduly burdensome or unreasonable as it was related to safety of claimant and others in the vicinity of operating machines and power tools. While claimant denies he called a supervisor, who may have seen the incident and reported him, a "snitch bitch," his denial is less than credible given his repeated challenge towards and argument with supervisors and management personnel about following a simple and unimposing safety work rule. Benefits are denied.

**DECISION:**

The July 18, 2014 (reference 04) unemployment insurance decision is affirmed. The 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.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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