

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM W GIMM
Claimant

APPEAL NO. 11A-UI-04988-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**APAC CUSTOMER SERVICES
OF IOWA LLC**
Employer

OC: 03/13/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 7, 2011 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on May 9, 2011. Claimant participated. Employer responded to the hearing notice instructions but was not available when the hearing was called, did not find a replacement witness before the record was closed, and did not participate.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a customer service representative and was separated from employment on March 13, 2011. He broke the good conduct policy by using an expletive during the work day after having been warned about having done so in the past.

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.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Claimant's use of an expletive at work after having been warned about the same issue is evidence of deliberate disqualifying job related misconduct. Benefits are denied.

DECISION:

The April 7, 2011 (reference 01) 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs