

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DAVID HART**  
Claimant

**IOWA PREMIUM LLC**  
Employer

**APPEAL 15A-UI-12483-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/18/15**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 6, 2015 (reference 02) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on December 1, 2015. Claimant participated. Employer participated through director of human resources Doug Baker.

**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 general laborer from December 1, 2014 and was separated from employment on October 23, 2015; when he was terminated.

On February 26, 2015 claimant reported to director of human resources Doug Baker, that a coworker, Jose Solis, called him a “nigger” in the parking lot. Claimant and Solis have interpersonal problems due to the fact that claimant is in a romantic relationship with Solis’s ex-wife. Claimant reported to Baker that other individuals witnessed Solis use the racial slur. Baker interviewed Solis who denied using the racial slur and stated he felt that claimant was threatening to physically harm him in the parking lot. Neither employee was disciplined as a result of the incident.

On September 15, 2015, claimant walked past Solis. Solis asked, “What are you looking at, nigger?” Claimant reported Solis’s conduct to Baker. Baker spoke with Solis who denied using the racial slur and claimed that claimant was constantly approaching him and trying to fight. Baker personally sat down with both employees and verbally explained the personal issues between the two of them needed to stay out of the workplace and if they did not, they would lose their jobs. Both employees stated they understood.

On October 16, 2015, Solis followed claimant into the stairwell and called him a “nigger.” Claimant replied, “Why do you keep calling me a nigger? You always do this at work but when you see me outside of work you do not say anything to me and you keep driving.” Two other employees approached and told claimant to let human resources handle the situation. Claimant told Solis he would “whip his ass” but instead was going to let human resources handle the situation. The two employees reported the incident to Baker. Neither employee was present when the incident began and could not identify the aggressor. Baker suspended both claimant and Solis without pay and terminated their employment on October 23, 2015.

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

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

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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits.

*Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Here, claimant was not terminated for misconduct. Pursuant to the Iowa Civil Rights Act and corresponding federal laws, claimant has the right to a workplace free from discrimination on the basis of his race. Here, claimant attempted to handle the situation appropriately by reporting the racial slurs to human resources. The evidence shows that claimant acted just like any reasonable person would when being addressed with such an offensive racial slur. Employer did not present any reliable evidence that claimant was the aggressor in any of these situations.

Employer failed to establish claimant was terminated for misconduct.

**DECISION:**

The November 6, 2015 (reference 02) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Christine A. Louis  
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Decision Dated and Mailed

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