

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GERALD A KEENAN
Claimant

APPEAL NO. 07A-UI-09911-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRES-CO SYSTEM USA INC
Employer

OC: 09/16/07 R: 01
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 16, 2007, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on November 13, 2007. Claimant participated. Employer participated through Carmen Butcher and Mike Prahst.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time quality technician from August 16, 2004 until September 20, 2007, when he was discharged. Claimant was involved in a verbal altercation with his supervisor, Tim Myers, over the radio and refused to leave when asked twice. He said, "Fuck you, I'm not doing that, I'm not leaving," and called Myers a "dumbshit." A week earlier claimant said "fuck you" and "suck my dick" to another employee during a verbal altercation about materials needed to perform job duties. Employer warned claimant in January 2007 about repeated disrespectful comments and creating a hostile work environment with Myers and others by saying, "Who's going to join me at the unemployment office" and questioning management decisions. His behavior improved dramatically until September 2007.

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.

"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. EAB*, 462 N.W.2d 734 (Iowa App. 1990). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995).

Since claimant had improved his behavior and had established his ability to work without making disrespectful comments towards coworkers for a period of eight months, his saying "fuck you" to a coworker and calling his supervisor a "dumbshit" in mid-September 2007 was a deliberate disregard of previous warnings and is misconduct, with or without prior warnings.

DECISION:

The October 16, 2007, 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/kjw