

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRACY S NUSS**  
Claimant

**APPEAL NO. 12A-UI-12299-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REMBRANDT ENTERPRISES INC**  
Employer

**OC: 09/16/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Tracy Nuss filed a timely appeal from a representative's decision dated October 4, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on November 8, 2012. Claimant participated. The employer participated by Ms. Sally Brecher, Human Resource Manager, Department Manager and Ryan Sassman, Lead Worker. Employer's Exhibits One through Sixteen were received into evidence.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Mr. Tracy Nuss was employed by Rembrandt Enterprises Inc. from April 26, 2010 until September 17, 2012 when he was discharged from employment. Mr. Nuss worked as a full-time maintenance technician and was paid by the hour. His immediate supervisor was Shaun Iske.

The claimant was discharged following an incident that took place on September 14, 2012. On that date Mr. Nuss had requested permission from Mr. Iske to leave the premises to travel to Storm Lake to pick up burritos for lunch. Mr. Iske indicated that he did not think it was a good idea but that he would consider it. Mr. Nuss maintained the leaving was not a big issue and that he should not be required to punch out as he had not been required to do so in the past when he left briefly to obtain hearing aid batteries.

Mr. Iske left the area for a few moments and upon returning he observed Mr. Nuss appeared to be in an agitated conversation with his lead person, Mr. Sassman. As the claimant was leaving the area Mr. Iske called for the claimant to return three times. Both Mr. Iske and Mr. Sassman observed the claimant turn and state to them "fuck this, this is bullshit...that son of a bitch Ryan (Sassman) is not like he used to be!"

Because of his conduct Mr. Nuss was sent home at that time pending a further investigation by the employer. As Mr. Nuss left he continued to make derogatory statements.

It is Mr. Nuss' position that he was unaware that Mr. Iske or Mr. Sassman were still nearby as he walked out and that when he heard his name called he used "a bad word." Mr. Nuss maintains that the use of rough language is not unusual in the workplace and should not have resulted in his termination from employment.

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code section 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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful or name-calling context

may be recognized as misconduct disqualifying the employee from the receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). Use the foul language can alone be a sufficient ground for a misconduct disqualification. Warrell v. IDJS, 356 N.W.2d 587 (Iowa App 1984). An isolated instance of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits if it serves to undermine a superior's authority. Deever v. Hawkeye Window Cleaning Inc, 447 N.W.2d 418 (Iowa App. 1989).

The evidence in the record establishes that although rough language may have not been unusual in the workplace, the claimant's use of vulgarity was in a confrontational and disrespectful context that served to undermine the authority of both his immediate supervisor and his lead person. The claimant's use of profanity in this confrontational and disrespectful context constitutes misconduct. Accordingly, he is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

**DECISION:**

The representative's decision dated October 4, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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