

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RONALD W GOHRING
Claimant

TPI IOWA LLC
Employer

APPEAL 15A-UI-08153-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/28/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 16, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on August 11, 2015. The claimant participated for approximately 26 minutes before being disconnected. Attempts to reconnect the claimant were unsuccessful. The employer participated through Danielle Williams. Employer Exhibits One through Three were admitted into evidence.

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: The claimant was employed full-time as a production worker and was separated from employment on July 1, 2015, when he was discharged for using abusive language.

The employer has a written policy that prohibits the use of profane or abusive language in the workplace (Employer exhibit 1). The claimant was aware of the employer's policies and signed a receipt of acknowledgment of the employer's policies (Employer exhibit 1-A). The final incident triggering the claimant's separation occurred on the overnight shift between June 26 to 27, 2015. Employees had reported the claimant was making inappropriate comments with regard to Muslims and Muslims working at the employer's workplace (Employer Exhibit 2). Human resources generalist, Denise Schmidt, went to confront the claimant, and he became upset about his co-workers, Ali and Muhammad who he believed had made comments about bombs and inappropriate matters in prior shifts. He had demanded the employer call the law enforcement authorities but the employer stated it would be investigated. When Ms. Schmidt confronted the claimant, he became aggressive and combative, saying to Ms. Schmidt that the others were the problem, "fuck you bitch" and "let's do this right here." It became so aggressive that Ms. Schmidt had to call for back up support (Employer Exhibits 2 and 3). He was subsequently discharged.

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).

Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. While the employer did not present Ms. Schmidt to provide sworn testimony or submit to cross-examination, the combination of Ms. Schmidt's written statement and Ms. Williams' testimony, when compared to claimant's recollection of the event, establish the employer's evidence as credible. The claimant knew or should have known his conduct was in disregard of the employer's interests and reasonable standards of behavior that the employer has a right to expect of its employees. The employer had taken the claimant's concerns about his co-workers seriously by investigating, but his unhappiness with their failure to call law enforcement authorities does not justify the abusive language or profanity used by the claimant. "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 claimant’s conduct is considered disqualifying misconduct, even without prior warning. Benefits are denied.

DECISION:

The July 16, 2015 (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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs