

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON J WARNER**  
Claimant

**APPEAL NO. 16A-UI-05668-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEERY BROTHERS INC**  
Employer

**OC: 04/17/16**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Deery Brothers (employer) appealed a representative's May 10, 2016 (reference 01) decision that concluded Jason Warner (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 7, 2016. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer was represented by Todd Richardson, Hearings Representative, and participated by Suzy Meza, Technical Coordinator; Terry Mertens, General Manager; Tim Heiniger, Used Car Manager; T'Oddre Owens, Sales Consultant; Jodi Swearingen, Transportation Coordinator; and Russell Krieger, Sales Consultant. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 17, 2013, as a full-time sales consultant. He had worked for the employer previously. The claimant signed for receipt of the employer's handbook on July 2013. The employer issued the claimant a written warning on October 24, 2013, for failure to properly report his absence. On May 6, 2014, the employer issued the claimant a written warning for taking gas from the employer. On April 24, 2016, the employer issued the claimant two written warnings. The first warning was for smacking a co-worker on the buttocks and the second warning was for making offensive comments to a co-worker. On November 13, 2015, the employer issued the claimant a written warning for not participating in a mandatory morning meeting and leaving the meeting without permission. For the 2015 warnings, the employer notified the claimant that further infractions could result in termination from employment.

On February 5, 2016, a co-worker told the employer he was going to quit after the claimant called him an idiot in front of his customer. The customer complained to the claimant about his behavior and the claimant told the customer he did not care what she thought. The employer told the co-worker it would not happen again.

On or about March 28, 2016, the claimant drove up on the smoker's patio in one of the employer's cars at a fast pace. The four or five people on the patio had to move away so they would not be hit by the car. The claimant got out of the car and said, "You all thought I was going to hit you".

On March 30, 2016, the claimant told a co-worker that he did not know how to "park a fucking car". The claimant told his supervisor about his comment. The supervisor advised the co-worker to talk to the claimant. The co-worker got in a car with the claimant. The co-worker said he was retired military and he did not like to be talked to in that manner. The claimant asked him if he was a big fucking baby or just sensitive. The co-worker said he was neither. He wanted to be treated like a professional.

Later, the claimant walked up to the receptionist and asked for a key in front of a customer. The receptionist said she needed the claimant to give her a stock number. The claimant said, "I don't need any fucking attitude right now". The claimant got close to the co-worker's ear and called him a "fucking retard". For the rest of the day the claimant called the co-worker a retard, idiot, and a cry baby. The co-worker reported the claimant's behavior to the employer. The employer terminated the claimant on April 1, 2016.

The claimant filed for unemployment insurance benefits with an effective date of April 17, 2016. He received no benefits after the separation from employment. The employer participated personally at the fact-finding interview on May 10, 2016, by Suzy Meza.

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

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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).

Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's May 10, 2016 (reference 01) decision is reversed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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