

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE GONZALEZ
Claimant

APPEAL NO: 06A-UI-08919-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE DEXTER COMPANY
Employer

**OC: 07/02/06 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jose Gonzalez (claimant) appealed an unemployment insurance decision dated July 25, 2006, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from The Dexter Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 21, 2006. The claimant participated in the hearing. The employer participated through Kathy Baker, Human Resources Secretary. Employer's Exhibits One through Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

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 employed as a full-time Disa laborer which involved setting cores into the Disa-Matic from March 28, 2005 through July 5, 2006, when he was discharged. On June 28, 2006, his supervisor, Jeff Schilb, was talking down to him and using profanity when giving the claimant directives. The claimant lost his temper and told his supervisor, "Fuck you I'm not setting cores." When the supervisor told him he was setting cores, the claimant responded, "Fuck you Schilb, you don't scare me." The claimant was suspended pending further investigation. Two hourly employees who observed the incident reported the supervisor did not swear or treat the claimant with any disrespect. The claimant was subsequently discharged for insubordination and failure to follow his supervisor's instructions.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 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 Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for insubordination after using profanity towards his supervisor and refusing to follow the employer's directives. "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." This is ordinarily a fact question for the Agency. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983) is overruled "to the extent [it] contradicts this position. Myers v. Employment Appeal Board, 462 N.W.2d 734 (Iowa App. 1990). The claimant admitted

he became angry and used profanity towards his supervisor but claims his supervisor used profanity towards him first. Even if the supervisor used profanity towards him, that does not excuse the claimant's conduct. The claimant could have and should have reported the supervisor's conduct to the employer instead of acting out his anger. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 25, 2006, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/cs