

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT HARKRIDER
Claimant

APPEAL NO. 07A-UI-08699-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELLIOTT OIL COMPANY
Employer

**OC: 09-03-07 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 7, 2007, reference 10, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 26, 2007. The claimant participated in the hearing. Pam Joyner, Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time assistant manager for Elliott Oil Company from March 21, 2007 to August 14, 2007. On July 4, 2007, the claimant received a written warning for using profanity in response to a simple question from a co-worker. The claimant admitted he did use profanity on that occasion. On August 9, 2007, he received a written warning for doing one handwritten void August 4, 2007, and two handwritten voids August 5, 2007, rather than voiding the transactions through the register. As a result there was a shortage of \$18.19. When Ms. Joyner confronted him about the situation by calling him at home the claimant became upset and told her, "Don't bother me on my own time." When Ms. Joyner issued the written warning to him about the void slips August 9, 2007, he told her to "fire me or demote me, I don't care." He said, "This is bullshit" and "Fuck this" and Ms. Joyner told him to quit sitting on the cooler and do his job and reported his comments to Area Manager Kenny Hamm. The claimant did not deny making those statements. On August 14, 2007, Mr. Hamm issued the claimant a final written warning and terminated his employment for his attitude and because his "ability to fulfill the assistant manager position had not been reached" as he failed to complete several scheduled tasks such as shift cuts, which he said he did not complete because he was "pissed off," and daily reports which he said he did not know how to do.

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 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 claimant used profanity after being warned and refused to perform his job as expected or as it appears he was capable of doing. The claimant indicated the employer should fire him or demote him because he did not care and his performance reflected his attitude. If he had a personality conflict with Ms. Joyner he had a responsibility to at least try to talk it out rather than swearing at her and speaking to her in a disrespectful manner when it does not appear she did anything inappropriate. It does not seem that a manager calling her assistant manager at home to question him about three paper void slips is unreasonable. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The September 7, 2007, reference 10, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css