

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLE C KINSEY
Claimant

APPEAL NO. 09A-UI-09018-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON TRANSPORTATION CO INC
Employer

**Original Claim: 05/31/09
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cole Kinsey filed an appeal from a representative's decision dated June 18, 2009, reference 02, which denied benefits based on his separation from Jacobson Transportation Company, Inc. (Jacobson). After due notice was issued, a hearing was held on July 13, 2009 in Des Moines, Iowa. Mr. Kinsey participated personally and offered additional testimony from Judy Kinsey. The employer participated by Pam Conn, Cross Dock Manager. Exhibit One was admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Kinsey was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Kinsey was employed by Jacobson from August 14, 2008 until May 19, 2009. He worked full time in the warehouse. He was discharged for using profanity in violation of a known work rule. The profanity was used in a voice message left on a cell phone used by a coworker, Josh Hummell.

Mr. Kinsey was angry with Mr. Hummell over a personal matter. He left a message because Mr. Hummell would not answer the phone. The company-owned phone was left at the workplace because Mr. Hummell was off work due to a work injury. Someone other than Mr. Hummell heard the message first. The message was laced with profanities and obscene suggestions as to what Mr. Hummell could do with Mr. Kinsey's genitals. As a result of the above, Mr. Kinsey was discharged on May 19, 2009.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321

N.W.2d 6 (Iowa 1982). Mr. Kinsey was discharged for his use of profanity, including name-calling, towards a coworker. Whatever justification he may have had for his anger would not justify the use of such language on a company phone.

Mr. Kinsey's conduct was clearly contrary to the type of behavior the employer had the right to expect. He knew the employer's work rules. His violation of those rules constituted a substantial disregard of the employer's standards and is, therefore, misconduct within the meaning of the law. As such, benefits are denied.

DECISION:

The representative's decision dated June 18, 2009, reference 02, is hereby affirmed. Mr. Kinsey was discharged for misconduct in connection with his employment. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw