

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENTA D MANNING

Claimant

APPEAL NO: 14A-UI-02821-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABM JANITORIAL SERVICES NORTH

Employer

OC: 02/09/14

Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated March 4, 2014, reference 01, that held she was discharged for misconduct on February 5, 2014, and benefits are denied. A telephone hearing was held on April 7, 2014. The claimant participated. Deniece Norman, Representative, John VanKamen, Account Manager, Bertha Roby, Crew Leader, Kim Kruse Supervisor, and Joanna Sanchez, Patrick Mott, Cleaners, participated for the employer.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on November 8, 2011, and last worked for the employer as a full-time janitor on assignment at John Deere on February 6, 2014. Supervisor Kruse instructed claimant not to go to the work area where Ms. Sanchez cleaned. He went to the area and Sanchez reported him. Kruse overheard claimant use profanity to Sanchez saying quit running your fucking mouth and talking shit.

Kruse went to the work area. John Deere security was discussing the incident when she got there. Kruse instructed claimant and Sanchez to go to the office area.

Employee Mott saw claimant make physical contact with Sanchez and reported it. The employer has a policy that prohibits workplace violence. Manager Van Kamen consulted with employer HR and a decision was made to terminate claimant for unprofessional conduct and use of profanity. The employer told claimant he was being terminated on February 7, 2014 and it disciplined Sanchez with a suspension. John Deere advised the employer claimant could not return but Sanchez could.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes employer established claimant was discharged for misconduct on February 6, 2014 for unprofessional conduct and use of profanity.

The incident started because claimant disobeyed a supervisor instruction not to be in the area where the incident occurred. Claimant admits profanity use but points to Sanchez who did so also. He denies physical contact but another employee saw it.

The employer was justified to discipline Sanchez with a suspension for her conduct and terminate claimant for his.

The employer has a right to expect that employees who are performing cleaning duties will do so in a professional manner especially where they are working for a business client. Claimant was involved in a serious incident at a place where he should not have been and provoked Sanchez with profanity because she reported him to management. He escalated the incident by making physical contact with Sanchez. Job disqualifying misconduct is established.

DECISION:

The department decision dated March 4, 2014, reference 01, is affirmed. The claimant was discharged for misconduct on February 6, 2014. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs