

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J BURGER
Claimant

APPEAL NO: 06A-UI-08128-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSCEOLA FOODS CORPORATION
Employer

**OC: 07/23/06 R: 03
Claimant: Appellant (5)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 11, 2006, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on August 29, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Judy Callahan participated in the hearing on behalf of the employer with a witness, Jeremy Smith. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as production worker from February 28, 2005, to March 23, 2006. The claimant was informed and understood that under the employer's work rules, harassment of employees was grounds for immediate termination. The claimant received a warning for directing profanity at coworkers on February 15, 2006. Afterward, a coworker complained that the claimant had loudly apologized to her stating, "I guess I owe you an apology too" for swearing in front of her. The coworker felt intimidated and did not believe the apology was sincere. The claimant received a final written warning on March 6, 2006, that a future issue of being aggressive or swearing would result in termination.

On March 23, 2006, the claimant engaged in a face-to-face shouting match with a coworker that was overheard by a supervisor that involved profanity and yelling. The claimant was informed that he was terminated on March 24, 2006. He requested and was allowed to sign a voluntary termination form to protect his employment record.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. When a claimant is told he is terminated but is

allow to resign, it is not a voluntary termination. The separation in this case was a discharge by the employer.

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.

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 claimant's conduct after being warned about similar behavior was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated August 11, 2006, reference 01, is modified with no change in the outcome of the case. The claimant voluntarily quit employment without good cause attributable to the employer. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/cs