

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEDIDIAH L LICHT**  
Claimant

**APPEAL NO. 09A-UI-01138-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VAN DIEST SUPPLY CO**  
Employer

**OC: 12/07/08 R: 01  
Claimant: Appellant (5/R)**

Section 96.5-2-a - Suspension

**STATEMENT OF THE CASE:**

Jedidiah L. Licht (claimant) appealed a representative's January 15, 2009 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Van Diest Supply Company (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 11, 2009. The claimant participated in the hearing. Kevin Spencer, the director of plant operations, and Carolyn Cross appeared on the employer's behalf. 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:**

Did the employer suspend the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on August 30, 2005. The claimant worked as a full-time employee. On August 1, 2008, the claimant received a written warning for losing his temper with a supervisor.

On December 5, the claimant's lead supervisor told him to mentor a new employee, which meant the employee followed the claimant while he worked. A short time later another supervisor, R.C., asked the claimant to run some parts because the claimant was the tool crib runner. When R.C. told the claimant to have the mentor wait for the claimant until he finished this job, the claimant became upset because he wanted the new employee to go with him as his lead supervisor told him to do. R.C. did not think it was appropriate for the new employee to walk by a forklift the claimant had to operate for this task. Although R.C. told the claimant the shift supervisor, D.M., agreed that the new employee should not go with the claimant on this job, the claimant started arguing with R.C. The two engaged in a verbal confrontation. During the confrontation, the claimant told R.C. that this was Bull\_\_\_. After the claimant's confrontation with R.C. ended, he talked to D.M. about R.C. not allowing the claimant to have his mentor

come with him. When the claimant tried to argue with D.M., he was told that if he wanted to argue with D.M., he could go home. The claimant then went back to work.

The employer received a report that the claimant swore at R.C. while the two engaged in a verbal confrontation. After the claimant admitted he told R.C. that this was Bull\_\_\_\_, the employer asked the claimant to sign a written statement acknowledging that he had acted inappropriately and used foul language directed to a supervisor. Although the claimant did not agree with the content of the written statement he signed it thinking the employer would just give him a written warning. After the claimant signed the statement, the employer suspended him for four weeks. The claimant returned to work after the four-week suspension.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer suspends or discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was suspended 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 propriety of a suspension is not at issue in an unemployment insurance case. An employer may be justified in suspending an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

After the claimant received the August 1 written warning for losing his temper at a supervisor, he knew or should have known the employer did not condone this type of behavior at work. On December 5, the claimant again lost his temper when he engaged in a verbal confrontation with R.C. about whether a new employee should walk next to a forklift the claimant had to operate to complete a job task. Even though the claimant's lead supervisor gave him permission to mentor a new employee, the claimant argued with a supervisor, R.C., about his instruction to have the new employee wait for him until he finished running a part to the tool crib. The claimant may not have liked R.C.'s instruction, but his behavior - engaging in a verbal confrontation with R.C. and then arguing about R.C.'s directions to the shift supervisor, amounts to an intentional disregard of the standard of behavior the employer has a right to expect from an employee. Even if the employer did not explain the consequences of his behavior until after the claimant signed a written statement, the claimant still lost his temper with a supervisor on December 5 and argued with him. The facts do not support the employer's assertion that the claimant swore at the supervisor. Instead, the claimant told R.C. that this was Bull\_\_\_\_. The claimant's conduct on December 5, 2008, however, constitutes work-connected misconduct. Therefore, the employer suspended the claimant for disqualifying reasons. As of December 7, 2008, the claimant is not qualified to receive benefits.

The record indicates the claimant filed for and received benefits during his four-week suspension. As a result, the issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section.

**DECISION:**

The representative's January 15, 2009 decision (reference 01) is modified but the modification has no legal consequence. The employer did not discharge the claimant. Instead, the employer suspended the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 7, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css