

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**Appeal Number: 04A-UI-07879-DWT
OC: 06/20/04 R: 03
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

**SCOTT A UTZINGER
286 BRENTWOOD PL NE
CEDAR RAPIDS IA 52402**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AFFORDABLE PLUMBING & HEATING
816 – 1ST AVE NE
CEDAR RAPIDS IA 52405**

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**BRIAN FAGON
ATTORNEY AT LAW
2920 – 1ST NE
CEDAR RAPIDS IA 52402**

(Administrative Law Judge)

**ED KRUG
ATTORNEY AT LAW
PO BOX 186
CEDAR RAPIDS IA 52406**

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Scott A. Utzinger (claimant) appealed a representative's July 13, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Affordable Plumbing & Heating (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 August 11, 2004. The claimant participated in the hearing with his attorney, Brian Fagon. Ed Krug, Attorney at Law, appeared on the employer's behalf with witnesses, Don Karr, Heidi Karr, Rick Skersick, and Tamara Van Sprecken. During the hearing, Claimant's Exhibit A was offered and admitted as evidence. 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 discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer for six years. He worked as a full-time sales person. His job required him to give bids and make proposals to potential customers. The claimant understood the employer prohibited employees from engaging in any side jobs unless the employer authorized the job or had nothing to do with the employer's business.

When the claimant became upset, he swore. Since the employer is in the construction business, the employer's work environment tolerated some profanity as long as it was not directed to a customer or personally attacked another individual. The Don Karr, the owner, gave the claimant verbal warnings about the claimant's language at work. The only warning the claimant recalled occurred over a year prior to his separation.

On June 14, 2004, the employer had a meeting. The claimant became upset and angry during the meeting. While the claimant was angry he told Karr to shut up, but used profanity when he made this remark. The claimant does not remember the June 14 meeting or that the employer warned him about his language. On June 16, the employer observed the claimant was angry and upset with a customer after he hung up the phone. The claimant made an obscene comment about the female customer after he hung up the phone in a voice loud enough that employees heard his remark. Some employees were offended by the claimant's vulgar comment. The claimant does not remember the employer talking to him about the language he used on June 16.

On June 15, an employee saw a file in the claimant's vehicle that had some drawings in the file. The name on the file did not match any name the employer had recorded as a customer and the claimant had not listed the person in the employer's appointment book indicating he had contacted or talked to this person on the employer's behalf. The employer did not say anything about this file on June 15 or 16. The claimant was on vacation on June 17 and 18.

Based on some questions Skerick, an employee who works as a carpenter, asked the employer a week before, the fact the person was not listed in the employer's appointment book and that a key with this person's name on it was found in the claimant's desk, the employer concluded the claimant was engaged in a side job for this person and took business away from the employer.

The employer decided to discharge the claimant because of his conduct during the June 14 meeting, his derogatory and profane comments about a customer on June 16 and for engaging in a side job that was in direct competition to the employer but used the employer's supplies to produce a drawing. On June 21, 2004, the employer told the claimant he was discharged because he was doing a side job. The claimant attempted to explain what he had done for these people who were her personal friends, but was not successful.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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).

The week of June 14, the employer became increasingly disenfranchised with the claimant. First, the claimant swore at the employer during a June 14 meeting. Next, the employer found a suspicious file that looked as if the claimant was competing against the employer and the claimant again used an obscenity at work when he became frustrated with a customer but after his phone conversation with the customer had ended. The combination of the claimant's profanity, his conduct during the June 14 meeting and the employer's suspicions that he engaged in side jobs led the employer to discharge the claimant. Even though the claimant does not remember the June 14 meeting, four people on the employer's behalf testified about the claimant's comments after he became angry and upset with Karr. The evidence indicates the claimant's conduct during the June 14 meeting amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The claimant's conduct and comment on June 14 amount to insubordinate behavior. Since the claimant had been warned before about his language when he became angry this was not an isolated incident. For this reason alone, the employer discharged the claimant for work-connected misconduct.

The employer's conclusion that the claimant engaged in a current side job is not supported by the facts. Even though the employer expected the claimant to record appointments he made with potential customers in an appointment book, the facts indicate the claimant did not always do this. Instead, he made a file by putting a potential customer's name on a manila file folder. This is what he did for the customer in question. The claimant's testimony is credible as to why he made drawings for his personal friends. Even though the claimant did not engage in a current side job in violation of the employer's policy, the employer still discharged him for reasons amounting to work-connected misconduct. As of June 20, 2004, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 13, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for a reason, which does constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 20, 2004. 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.

dlw/kjf