

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADLEY J PHILLIPS

Claimant

APPEAL NO. 09A-UI-16797-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSSBERG SANITATION INC

Employer

OC: 10/18/09

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Bradley Phillips, filed an appeal from a decision dated November 3, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on December 14, 2009. The claimant participated on his own behalf. The employer, Mossberg Sanitation, Inc. (Mossberg), participated by Contract Manager Matt Johnson.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Bradley Phillips was employed by Mossberg from September 6, 2007 until October 16, 2009 as a full-time laborer. During the course of his employment Mr. Phillips had been counseled by Contract Manager Matt Johnson about his angry outbursts toward other employees. He was told if there were problems he should avoid confrontations and come speak with the contract manager.

On October 16, 2009, the claimant and other members of the crew were meeting with Supervisor Mike Johnson. The claimant became upset over what he interpreted as criticism of the work he was doing and became loud and verbally abusive to Mike Johnson. Mr. Phillips called his supervisor a "fat fucker," telling him he was too fat to tie his own shoes or be able to walk across the floor without having to stop halfway across to sit down and catch his breath.

Mike Johnson consulted with Matt Johnson and the decision was made to discharge the claimant. The employer was concerned over the escalating vehemence of Mr. Phillips's outbursts. He was informed he was discharged by Mike Johnson and given a termination report to sign. The claimant signed the report which stated he was being discharged for being insulting and insubordinate to his supervisor and did not take advantage of the opportunity to fill out the portion of the report where he could give his side of the story.

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 claimant had been counseled about his angry outbursts in the work place. The employer let him know such conduct was unacceptable and that any problems he had in the future should be referred to the contract manager rather than shouting at other employees.

Instead of doing as he was instructed to do the claimant verbally abused his supervisor in front of other employees. Mr. Phillips agreed he had called his supervisor these names and said such things to him about his weight, but maintained it was only after he had been told he was fired. The administrative law judge does not find this to be credible as Mike Johnson consulted with Matt Johnson before discharging the claimant and therefore the decision was made after the staff meeting, and not during it. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of November 3, 2009, reference 01, is affirmed. Bradley Phillips is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs