

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TRENT JONES**  
Claimant

**APPEAL 21A-UI-02167-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEQUEL YOUTH SERVICES OF  
WOODWARD**  
Employer

**OC: 03/29/20  
Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On January 5, 2021, the claimant, Trent Jones, filed an appeal from the December 29, 2020, (reference 02) unemployment insurance decision that denied benefits based on his discharge for conduct not in the best interest of the employer. The parties were properly notified about the hearing. A telephone hearing was held on February 17, 2021. Claimant participated and testified. Employer participated through Human Resource Director Marcia Dodds and Program Director Ostin James. Employer's Exhibits 1 through 11 were received into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on April 16, 2020. Claimant last worked as a full-time youth counselor. Claimant was separated from employment on October 30, 2020, when he was discharged.

On October 27, 2020, claimant's immediate supervisor, Ostin James, received a call from program director, Luke Corrick, regarding an incident between claimant and a student. Corrick reported claimant was overheard telling the student "I'll show you what we do with snitches" and using a racial slur towards the student. Corrick further reported other staff members had to physically intercept to keep the claimant and student apart. James next received a call from shift leader, Riley McClaskey. McClaskey told James that he observed the entire incident. According to McClaskey's report, it began when the student came to McClaskey to complain about claimant improperly sharing food with another student. McClaskey corroborated what Corrick had told him.

Based on Corrick and McClaskey's reports, claimant was suspended and an investigation was opened. The investigation included conversations with two other staff members who were present on the night in question, as well as the student. All three largely confirmed the version

of events reported by Corrick and McClaskey. It was also reported that claimant used an object referred to as a Ukero pad against the student. James explained he has been trained in Ukero pad usage, as it is meant as a tool for de-escalation. According to James, the device is essentially a large foam pad that staff can use to shield themselves when students attempt to strike them. It was reported claimant has used the pad to push the student, which escalated, rather than de-escalated the situation.

As part of the investigation, claimant was also interviewed. Claimant denied yelling at the student, using racial slurs, or making any reference to him being a "snitch." According to claimant the student was upset around bedtime transition time and became violent. Claimant reported that he attempted to de-escalate the situation, but it was difficult to do because he did not have the assistance of other staff members and the response team was slow to arrive.

At the conclusion of the investigation, Dodds and James found the reports of Corrick, McClaskey, two other staff members, and student to be credible and discharged claimant for numerous policy violations relating to the treatment of students. At the time of the hearing, claimant acknowledged that the behavior described by Corrick and McClaskey would be against the employer's policies and procedures, but denied he engaged in that behavior. Claimant did not know why his coworkers would fabricate their reports about the incident. Claimant noted he is African-American and finds the racial slur he was alleged to have used extremely offensive. Claimant had no prior disciplinary action related to his interactions with students.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events. The employer provided testimony from both Dodds and James regarding the investigation into the events taking place on October 27, 2020. The investigation involved interviews with multiple witnesses to the incident. Each witness reported similar events and the claimant could not identify any reason why his coworkers would fabricate such a story.

Here, the claimant violated multiple policies and procedures put in place by the employer, including using profanity and name calling towards a student. An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits.

*Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). "An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority." *Deever v. Hawkeye Window Cleaning, Inc.* 447 N.W.2d 418, 421 (Iowa Ct. App. 1989). The "question of whether the use of improper language in the workplace is misconduct is nearly always a fact question. It must be considered with other relevant factors...." *Myers v. Employment Appeal Board*, 462 N.W.2d 734, 738 (Iowa App. 1990).

Aggravating factors for cases of bad language include: (1) cursing in front of customers, vendors, or other third parties (2) undermining a supervisor's authority (3) threats of violence (4) threats of future misbehavior or insubordination (5) repeated incidents of vulgarity, and (6) discriminatory content. *Myers v. Employment Appeal Board*, 462 N.W.2d 734, 738 (Iowa App. 1990); *Deever v. Hawkeye Window Cleaning, Inc.* 447 N.W.2d 418, 421 (Iowa Ct. App. 1989); *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995); *Carpenter v. IDJS*, 401 N.W. 2d 242, 246 (Iowa App. 1986); *Zeches v. Iowa Department of Job Service*, 333 N.W.2d 735 (Iowa App. 1983). While there is no citation for discriminatory content, but there is no doubt that this is an aggravating factor. The consideration of these factors can take into account the general work environment, and other factors as well.

Here, there are multiple aggravating factors to consider when looking at claimant's behavior. The profanity in this case was used towards a student, someone whom claimant is in a position of authority over. Not only did claimant use profanity, but he also referred to the student using a racial slur. The fact that claimant and the student may be of the same race, does not mitigate this behavior. Finally, claimant also improperly used a Ukero pad against the student in an offensive manner, which escalated the situation further, putting the claimant, student, and other staff members at risk. Claimant's conduct on October 27, 2020 is considered disqualifying misconduct, even without prior warning. Benefits are denied.

**DECISION:**

The December 29, 2020, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



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Nicole Merrill  
Administrative Law Judge

March 2, 2021  
Decision Dated and Mailed

nm/scn