

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L HARRISON
Claimant

APPEAL NO. 06A-UI-09987-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN A KORSLUND
Employer

**OC: 09/17/06 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

David Harrison (claimant) appealed a representative's October 6, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with John A. Korslund (employer) for causing dissension among other employees. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 25, 2006. The claimant participated personally and through Kenneth Morse, Former Co-worker, and Rebecca Harrison, the claimant's wife. The employer participated by John Swanberg, Personnel Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 22, 2004, as a full-time general hog farm worker. The employer issued approximately 50 verbal warnings to the claimant over the course of his employment. Once the claimant became frustrated and was yelling "fuck" and "damn" while walking in the hallway. The employer warned the claimant that his inappropriate language would not be tolerated.

On September 8, 2006, the claimant was upset because he thought he did more work than a co-worker. He wrote a message on a board to his co-worker using the words "fucking" and "shit." The claimant went on vacation after September 8, 2006. On September 21, 2006, the claimant stopped by the employer's to obtain his paycheck. The employer terminated the claimant for displaying obscene language in the workplace.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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 Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Foul language of itself can constitute disqualifying job misconduct. Warrell v. Iowa Department of Job Service, 356 N.W.2d 587 (Iowa App. 1984). The claimant used foul language on two occasions. After the first occasion he was warned. The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. When the claimant intentionally disregarded the standard of behavior that the employer has a right to expect of its employees, the claimant's actions became misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's October 6, 2006 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/cs