

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CODY J LAUFER**  
Claimant

**APPEAL NO. 09A-UI-08609-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NAN RAN INC**  
**RANDY KUEHL HONDA**  
Employer

**OC: 04/19/09**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 2, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 1, 2009. Claimant Cody Laufer participated. Sales Manager Paul Thulin represented the employer and presented additional testimony through Sales Manager Nate Kuehl and Finance Manager/Sales Manager Jon McGraw.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Cody Laufer was employed by Randy Kuehl Honda on a full-time basis from January 2007 until April 21, 2009, when Owner Randy Kuehl and Sales Managers Paul Thulin and Nate Kuehl discharged him from the employment. Nate Kuehl is Randy Kuehl's son. Mr. Thulin was Mr. Laufer's immediate supervisor.

Mr. Laufer had started the employment as a sales consultant. During 2007, Mr. Laufer was promoted to assistant internet sales manager. In December 2007, Mr. Laufer was promoted to internet sales manager. In January 2008, Mr. Laufer added the duties of assistant business manager.

Mr. Laufer continued in the internet sales manager/assistant business manager duties until April 6, 2009, when the employer reassigned Mr. Laufer to a sales consultant position. The employer had decided to restructure the internet sales department. In connection with the restructuring, the employer hired a new internet sales manager, who would have diminished duties compared to those Mr. Laufer had held as internet sales manager. The new internet sales manager lacked auto industry experience and would presumably earn less money than Mr. Laufer had earned in the internet sales position. Mr. Laufer outwardly acquiesced in the

change in duties while he sought new employment. Mr. Laufer had been speaking with Cars.com about employment. The employer was aware of this contact. Cars.com had conditioned its further discussions with Mr. Laufer on the Randy Kuehl Honda's approval of those discussions because Randy Kuehl Honda was a Cars.com's customer.

On April 21, Mr. Laufer arrived at work to find that he could not access the employer's computer system from his desk. Mr. Laufer asked Sales Manager Paul Thulin and Business Manager Jon McGraw what was going on, but each referred Mr. Laufer to the other for further information. The new internet sales manager then took over Mr. Laufer's desk and Mr. Laufer found himself without a desk. Later in the morning, Sales Manager Nate Kuehl provided Mr. Laufer with a memo that said Mr. Laufer was to relocate to a desk in a closet-sized room just off the sales floor. The cramped room was a space generally reserved for brand new sales consultants, who would either be assigned another workspace or quit, depending on their success in the employment. In light of the events that preceded the memo, the memo itself, and comments from the owner and other staff, Mr. Laufer concluded the employer was trying to compel him to quit the employment. Mr. Laufer was aware that the employer had been looking for ways to save money in the downturned economy. Owner Randy Kuehl had announced at one or more staff meetings that, "Monkeys can sell Hondas" because of the brands reputation.

Mr. Laufer was frustrated, upset, and angered by the memo concerning his new desk assignment and what he perceived to be a move to provoke him to quit the employment. Upon reviewing the memo regarding the desk assignment, Mr. Laufer uttered the remark, "This is bullshit." No customers were within earshot, but Nate Kuehl and other employees were. Mr. Laufer then went to a coworker's desk, put the phone on speaker mode, and used the telephone to contact the competing Honda dealer in Iowa City. Mr. Laufer made contact with the receptionist and requested to speak with the Sales Manager. Mr. Laufer hung up the phone while he was on hold waiting for the Sales Manager. Mr. Laufer then stepped outside the building to telephone a family member for guidance and support.

When Mr. Laufer returned inside a few minutes later, Mr. Thulin and Nate Kuehl summoned Mr. Laufer to a meeting. Mr. Kuehl had reported the incident to Mr. Thulin. Mr. Laufer explained that he was upset and frustrated about the chain of events culminating in the memo regarding the new desk assignment. Mr. Thulin told Mr. Laufer to go home and that the employer would contact him further. Later that day, Mr. Thulin telephoned Mr. Laufer and told him he was no longer needed.

## **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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

An employer has the right to expect decency and civility from its employees. Use of profanity or offensive language in a confrontational, disrespectful, or name-calling context, may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made. 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, including the context in which it is said, and the general work environment. See Myers v Employment Appeal Board, 462 N.W.2d 734, 738 (Iowa Ct. App. 1990).

In this instance, the context of Mr. Laufer's conduct is key. The evidence indicates that Mr. Laufer had recently been demoted. The demotion was prompted, at least in significant part, by the employer's knowledge that Mr. Laufer was seeking new employment with Cars.com and the employer's belief that Mr. Laufer and Cars.com had unduly delayed notifying Randy Kuehl

Honda of their discussions. In other words, there were elements of retaliation and intentional humiliation in the demotion and desk reassignment. The employer's conduct was consistent with that of an employer intent on provoking a quit. The employer intentionally introduced an element of surprise humiliation in connection with the desk reassignment. A reasonable employer would not have been surprised by Mr. Laufer's response to the employer's actions. Mr. Laufer's utterance, though profane, was relatively mild under the circumstances. The utterance was an expression of frustration, not name calling or offensive language directed at a particular person. Without question, Mr. Laufer exercised very poor judgment in uttering the remark. Mr. Laufer exercised equally poor judgment when he contacted the employer's competitor. But Mr. Laufer quickly abandoned the telephone call to the competitor before there was any meaningful contact with the competitor. The telephone call did not harm the employer. No customers were present. The other employees present were not surprised or demoralized by Mr. Laufer's conduct. The weight of the evidence indicates that Mr. Laufer's utterance on the last day was an isolated incident.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Laufer was discharged for no disqualifying reason. Accordingly, Mr. Laufer is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Laufer.

**DECISION:**

The Agency representative's June 2, 2009, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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