

**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**

**DONALD D ANDERSON
2498 – 593RD TRL
ALBIA IA 52531**

**HAWKEYE MOLDING ENGINEERING INC
HWY 5 S
PO BOX 216
ALBIA IA 52531**

**Appeal Number: 05A-UI-03136-JTT
OC: 02/27/05 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.**

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.

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 is 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Donald Anderson filed a timely appeal from the March 17, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 12, 2005. Claimant did participate. Employer did participate through Gary Wilson, Supervisor.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Donald Anderson was employed by Hawkeye Molding as a full-time material handler from May 5, 2004 until January 25, 2005, when his supervisor, Gary Wilson, discharged him for using profanity and raising his voice in the course of a heated disagreement. The disagreement took place on January 25. The disagreement between Mr. Anderson and Mr. Wilson began at lunchtime when Mr. Wilson thought Mr. Anderson had taken a long lunch. Mr. Anderson had in fact taken

a short lunch. Sometime that afternoon, Mr. Anderson mistakenly brought the wrong box of material to the work area. Mr. Wilson advised him of this and was probably blunt in doing so. Mr. Anderson responded by telling Mr. Wilson that he needed to treat him “like human and not fucking dirt.” Mr. Anderson also told Mr. Wilson that he needed to get his “fucking shit together.” Mr. Wilson told Mr. Anderson that he could clock out or be terminated. Mr. Wilson proceeded to advise Mr. Anderson that he was fired. Mr. Wilson clocked out and as he was exiting threw a box of product across the floor. Though profanity is tolerated in the plant in the context of joking, it is not tolerated in the context of heated disagreements. Mr. Wilson discharged Mr. Anderson for raising his voice and directing profanity towards him. Mr. Anderson had not previously been reprimanded, but had engaged in a heated argument with a previous supervisor in November or December of 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record indicates that Mr. Anderson was discharged for misconduct in connection with his employment.

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).

Because Mr. Anderson was discharged, the employer bears the burden of proof in this matter. See Iowa Code section 96.6(2). 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 (Iowa Ct. App. 1989).

Mr. Anderson's use of profanity during the confrontation on January 25, 2005 was a direct challenge to the authority of his supervisor, Mr. Wilson. Mr. Anderson may very well have been justified in expressing frustration. However, Mr. Anderson engaged in misconduct when his expression of frustration included a raised voice and profanity directed at this supervisor. Mr. Anderson was discharged for misconduct and is, therefore, disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

DECISION:

The representative's decision dated March 17, 2005, reference 01, is affirmed. The claimant is disqualified for benefits until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

jt/sc