

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE L. CARRASCO
Claimant

APPEAL NO. 10A-UI-05612-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARCO LTD
Employer

OC: 03/14/10
Claimant: Appellant (1)

Section 96.5-2-A -- Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 9, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 2, 2010. Employer participated by Stasia Stark, General Manager, and Mike Graves, Maintenance. Although the claimant responded to the hearing notice and provided a telephone number at which he could be reached, he did not answer his phone when that number was dialed. A detailed message was left for the claimant on how to participate in the hearing. He did not call prior to the closing of the record and the conclusion of the hearing. The record consists of the testimony of Stasia Stark and the testimony of Mike Graves.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer operates a Wendy's restaurant located in Cedar Rapids, Iowa. The claimant was a part-time crewperson. On March 9, 2010, the claimant and the manager, Stasia Stark, had a discussion concerning his job duties. The claimant insisted he was only a sandwich maker and the Ms. Stark informed the claimant that he was required to do all job duties required of a crewmember.

The claimant began to use foul and vulgar language, including "fuck you" and "bitch." He began screaming and yelling. Ms. Stark asked another employee, Mike Graves, to escort the claimant out of the restaurant. On the way out, the claimant told Mr. Graves that he wanted to retrieve some personal items. The claimant returned to the store and again began using profane language. Ms. Stark thought the claimant was going to punch her. She tried to call the police and the claimant ripped the phone out of the wall. The police did come and escort the claimant from the premises.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Profanity or other offensive language in a confrontational or disrespectful context may constitute misconduct, even in isolated situations or in situations in which the target of the statements is not present to hear them. See Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990). Threats are another example of misconduct. In Henecke v. IDJS, 533 N.W.2d 573 (Iowa App. 1995), the court stated that an employer has the right to expect decency and civility from its workers and that evidence of threats could be found both in words and body language. The employer has the burden of proof to show misconduct.

The evidence in this case has established misconduct. The claimant used foul and profane language with his supervisor. He was screaming and yelling and both Ms. Stark and Mr. Graves testified that they thought he was going to punch Ms. Stark. He ripped the phone out of the wall and had to be escorted from the premises by the police. The claimant's actions and words were both disrespectful and threatening. Benefits are denied.

DECISION:

The decision of the representative dated April 9, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css