

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIO E OBREGON**  
Claimant

**APPEAL NO: 13A-UI-08170-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLSTEEL INC**  
Employer

**OC: 06/16/13**  
**Claimant: Respondent (2R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Allsteel, Inc. (employer) appealed a representative's July 3, 2013 decision (reference 01) that concluded Mario E. Obregon (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 19, 2013. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Deneice Norman appeared on the employer's behalf and presented testimony from one witness, Emily Bennett. During the hearing, Employer's Exhibit One and Two were entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Reversed. Benefits denied.

**FINDINGS OF FACT:**

The claimant started working for the employer on September 27, 2010. He worked full time as a work cell operator/shop floor member at the employer's Muscatine, Iowa office furniture manufacturing facility. His last day of work was June 14, 2013. The employer discharged him on that date. The stated reason for the discharge was a repeated incident of violation of the employer's policies regarding inappropriate treatment of coworkers.

On June 13 the claimant had confronted another employee in the break room. He told the coworker that he was a "f - - - ing retard," that he could not read or write and did not deserve to have a job there. Several persons overheard this, including a team lead, who reported it to higher management. The claimant had previously been warned for similar conduct, most

recently on May 20, 2013, for an incident on May 10 where he had asked a coworker, “where is your f - - - ing teamwork?” The warning had advised the claimant that “your choice of words can be offensive and an immediate change in your communication style [is] necessary. . . Using this aggressive tone and word choice is in violation of our Fairness and Respect policy and is unacceptable. . . Additional remarks that violate the Fairness and Respect policy could result in additional corrective action up to and including termination of employment.”

Given the how recent this warning had been given as well as the severity of the language used on June 13, the employer determined to discharge the claimant.

The claimant established a claim for unemployment insurance benefits effective June 16, 2013. The claimant has received unemployment insurance benefits after the separation.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's abusive language towards a coworker particularly so recently after being warned for similar conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in

the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The representative's July 3, 2013 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 14, 2013. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment and recovery issues.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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