

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

DEBBIE S BAUMHOVER
746 PERU RD
DUBUQUE IA 52001

SWISS VALLEY FARMS CO
PO BOX 4493
DAVENPORT IA 52808-4493

Appeal Number: 04A-UI-01145-HT
OC: 01/04/04 R: 04
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

STATEMENT OF THE CASE:

The claimant, Debbie Baumhover, filed an appeal from a decision dated January 28, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 24, 2004. The claimant participated on her own behalf. The employer, Swiss Valley, did not provide a telephone number where a representative could be contacted and did not participate.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Debbie Baumhover was employed by Swiss Valley from August 5, 2002 until January 7, 2004. She was a full-time customer service representative.

On January 6, 2004, the claimant received a written warning from Supervisor Stacey Bauer. Ms. Baumhover felt the accusations were false but Ms. Bauer would not revoke the warning. Later that day, the claimant was talking to a co-worker, Walter McLaughlin, complaining about the warning and the supervisor's refusal to revoke it. She stated, "If I see that cunt outside Swiss Valley, she's going to get a piece of it."

Mr. McLaughlin reported the statement to Plant Manager Joe Holbrook and signed a statement. The claimant's comment was reported by Mr. McLaughlin as, "If I see that cunt outside of Swiss Valley, she's had it." The claimant denied saying, "she's had it," but did admit to saying, "she's going to get a piece of it," referring to a "piece of my mind." The employer considered this to be a threat against the supervisor, which is an offense subject to immediate discharge.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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).

Regardless of whether the claimant's statement was as reported by Mr. McLaughlin, or as admitted to by her, the comment was unprofessional, inappropriate and entirely unacceptable in the work place. It was a threat of some kind against a supervisor, accompanied by an extremely vulgar epithet, and it makes no difference whether it referred to a physical or verbal confrontation. It was made on company time, on company premises and against company personnel. The employer has the obligation to provide a safe and harassment-free environment for all employees and the claimant's conduct interfered with its ability to do so. It is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of January 28, 2004, reference 01, is affirmed. Debbie Baumhover is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

bgh/kjf