

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARON J MURRAY
Claimant

APPEAL NO. 07A-UI-10528-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BELLE/SIOUX CITY RIVERBOAT
Employer

**OC: 10/14/07 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Aaron J. Murray (claimant) appealed a representative's November 7, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Belle/Sioux City Riverboat (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 30, 2007. The claimant participated in the hearing. Barb Holsinger, the human resource director, Mike Tholmer, the casino manager, and Tami Mari appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 10, 2002. The claimant worked as a full-time dealer. Prior to October 11, 2007, the claimant's job was not in jeopardy.

On October 11, 2007, a customer complained about the claimant thumping his knuckles on a table. The claimant did not hear a supervisor, M., tell him to stop making the noise with his knuckles. The claimant continued making the noise. It was not until the claimant turned around that he saw and heard M. She immediately told him she was going to take him to the office. The claimant asked why. M. then left and a new supervisor came on duty.

The claimant was frustrated with M. because he had never received a written warning while working for the employer. The claimant vented his frustration to the supervisor who just came on duty. The claimant made the comment that she could be so nice one minute and a "c" the next. The supervisor did not say anything to the claimant, but he reported the comment to M. and Tholmer. M. reported that the claimant had been insubordinate because he failed to stop making noise with his knuckles when she had told him to stop making the noise.

On October 12, Tholmer gave the claimant a written warning for insubordination on October 11. The employer asked the claimant if he had said the “c” word on the floor. The claimant admitted he had and apologized because it was inappropriate to use that word in a public area. The employer reminded him that he should never use that word again. The claimant thought the October 12 warning and discussion was the end of the October 11 incident. The claimant did not know Holsinger was investigating the claimant’s comment.

On October 18, 2007, the employer discharged the claimant because of the profane comment he made about a supervisor on October 11, 2007. The employer concluded the claimant used profanity to describe a supervisor which amounted to gross misconduct.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker’s contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer’s interests or of the employee’s duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

On October 11, 2007, after M. told the claimant she would take him to the office, he was reasonably upset because he did not know what he had done to prompt being called to the office, which meant a written warning. M. may have assumed the claimant heard her tell him to stop making noise with his knuckles, but he did not. Unfortunately, M. did not take the time to find out why the claimant did not follow her direction. When M. left to go to another area, the claimant vented to the supervisor who replaced M. Even though the claimant did not specifically say M.’s name, the person he vented to knew who the claimant was talking about.

Given the fact the claimant’s job was not in jeopardy prior to October 11, he had not previously received any written warnings and his frustration toward M. was reasonable, the claimant’s isolated comment to another person, while extremely inappropriate, does not rise to the level of work-connected misconduct. Therefore, the claimant is qualified to receive unemployment insurance benefits as of October 14, 2007.

DECISION:

The representative's November 7, 2007 decision (reference 01) is reversed. The employer established business reasons for discharging the claimant. The employer did not establish that the claimant committed work-connected misconduct. As of October 14, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw