

**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**

**RICKY J BURRESS
1540 – 310TH ST
FOREST CITY IA 50436-8072**

**FLEETGUARD INC
ATTN HUMAN RESOURCES
311 N PARK ST
LAKE MILLS IA 50450**

**Appeal Number: 06A-UI-04500-H2T
OC: 04-02-06 R: 02
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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 20, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 11, 2006. The claimant did participate. The employer did participate through Beth Nyguard, Human Resources Coordinator, (representative) Kimberly Garrard, Human Resources Associate.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a material handler set up full time beginning July 17, 1992 through March 29, 2006, when he was discharged.

On March 28, 2006, the claimant went up to another employee, Dawn Meislahn, and used the word “fuck” as well as saying “mother fucking son of bitch.” The claimant admitted the next day

during the interview that he said some "choice words." The claimant told Ms. Nyguard that Ms. Meislahn did not say anything during the encounter. The claimant's language was overheard by Diane Osland, who told Ms. Nyguard that she overheard the claimant use the word "fuck."

The claimant was suspended on April 18, 2005, for three days for using profanity when speaking to another employee and for being disrespectful to coworkers. The claimant's warning on April 18, 2005, warned him that another incident could lead to his discharge. The claimant was also suspended on February 2, 2005, for one day for using profanity when speaking to a group of employees.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

“The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made.” Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990).

The claimant admitted using profanity when speaking to a coworker. The company’s policy prohibits use of profanity, even when speaking to employees who are trouble makers. Being upset or angry is not an acceptable reason for using profanity when speaking to a coworker. The claimant’s actions constitute misconduct. Benefits are denied.

DECISION:

The April 20, 2006, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

tkh/kkf