

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES B RULLESTAD
Claimant

NEVADA STAFFING LLC
Employer

APPEAL NO. 19A-UI-07149-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/28/19
Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 28, 2019, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Rullestad was discharged on August 1, 2019 for conduct not in the best interest of the employer. After due notice was issued, a hearing was held on October 2, 2019. Mr. Rullestad participated. Renee Lawson represented the employer and presented additional testimony through Lynne Popp, Melinda Puckett, and Krista Mormon. Exhibits 1, 4, 5 and A were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James Rullestad was employed by Nevada Staffing, L.L.C. as the full-time Executive Director of Windsor Manor, an assisted-living and memory care facility, until August 1, 2019, when Susan Foster, the business owner, discharged him from the employment. Windsor Manor is located in Nevada, Iowa. Foster Development is headquartered in Springfield, Missouri. Mr. Rullestad began his employment in 2016 as the Maintenance Director and was promoted to the Executive Director position in October 2018. On July 30, 2019, Mr. Rullestad and Krista Moorman, Windsor Manor Director of Health and Wellness, had a verbal disagreement regarding Mr. Rullestad's directive that the Residential Assistants (nursing assistants) assigned to the memory care unit take time away from their resident care duties to assist with painting the walls of the memory care unit. Ms. Moorman expressed concern that having the direct care staff step away from their regular duties to assist with the maintenance duty presented a safety risk to the residents in their care. During the discussion, Ms. Moorman stated that she had been in contact with corporate management staff. Mr. Rullestad got visibly angry and responded by asking "why would you call those fucking backward hillbillies?" Ms. Moorman partially misunderstood the utterance and believed that Mr. Rullestad was referring to her in the derogatory manner. Mr. Rullestad was in fact referring to Ms. Foster, the business owner. Ms. Moorman reported the utterance up the chain of command, which led to Ms. Foster's decision to discharge Mr. Rullestad from the employment. On August 1, Lynne Popp, Regional Director, and Renee

Lawson, Director of Human Resources, carried out the discharge. Earlier in the employment, the employer had spoken to Mr. Rullestad about the need to maintain professional conduct and to be aware of how his actions were perceived by others. This followed Mr. Rullestad's decision to hold a one-on-one lunch meeting with one of the Residential Assistants away from the workplace.

In making the decision to discharge Mr. Rullestad, the employer also considered Mr. Rullestad's failure to properly supervisor the Maintenance Director he had hired in late 2018. The new Maintenance Director preferred not to perform painting duties. It was this situation that led to Mr. Rullestad's decision to enlist the direct care staff in painting the memory care unit.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

An employer has the right to expect decency and civility from its employees and an employee’s use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior’s authority. *Deever v. Hawkeye Window Cleaning, Inc.* 447 N.W.2d 418 (Iowa Ct. App. 1989).

The evidence in the record establishes a discharge based on misconduct in connection with the employment. Mr. Rullestad’s July 30, 2019 vulgar and demeaning utterance was a direct attack on the authority of his superiors, including the business owner. The utterance was sufficient to demonstrative an intentional and substantial disregard of the employer’s interests. Mr. Rullestad is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Rullestad must meet all other eligibility requirements. The employer’s account shall not be charged for benefits.

DECISION:

The August 28, 2019, reference 01, decision is affirmed. The claimant was discharged on August 1, 2019 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer’s account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs