

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS ASWEGAN
Claimant

APPEAL NO: 13A-UI-09055-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROWNS CREW CAR OF WYOMING INC
Employer

**OC: 06/23/13
Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Dennis Aswegan (claimant) appealed an unemployment insurance decision dated July 30, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Browns Crew Car of Wyoming, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 11, 2013. The claimant participated in the hearing. The employer participated through Jamie Reeve, Employee Relations Specialist. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time driver from October 11, 2012 through June 24, 2013 when he was discharged for insubordination. He called Manager Sherri McNamara a bitch and when she informed him he was suspended, he said, "You can kiss my ass." The employer prohibits discrimination, harassment and violence in the workplace which includes verbal abuse and offensive or derogatory comments. Use of abusive or obscene language to a supervisor warrants immediate termination.

The claimant denies using profanity towards his manager and denies knowing why he was suspended and subsequently discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if he was discharged for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's

burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

The claimant was discharged on June 22, 2013 for insubordination. 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). The claimant denies all wrongdoing but the employer's evidence is more credible particularly because the manager's hearsay statement mentions the claimant made a comment about her riding with a black man and he made the same statement in the hearing. This statement had no relevance to the separation and the man's skin color had even less significance, yet he felt it important to mention. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. Benefits are denied.

DECISION:

The unemployment insurance decision dated July 30, 2013, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css