

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATT J GOODELL**

Claimant

**APPEAL NO. 17A-UI-06108-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KAPSTONE CONTAINER CORPORATION**

Employer

**OC: 05/07/17**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Matt Goodell (claimant) appealed a representative's June 6, 2017, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Kapstone Container (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 29, 2017. The claimant participated personally. Jeff Hartford, Union Representative, represented the claimant and testified on his behalf. The employer was represented by Toni McColl, Hearings Representative, and participated by Lorena Gingerich, Human Resources Manager. The employer offered and Exhibit One was received into evidence. The claimant offered and Exhibit A was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 hired on May 22, 2006, as a full-time journeyman mechanic B. The claimant received the union contract, and code of conduct and ethics. The employer prohibits verbal and physical harassment. The plant rules prohibited repeated profanity even though the claimant heard swearing daily on the manufacturing plant floor. On April 15, 2017, the employer issued the claimant an amended written warning for swearing at a supervisor on September 9, 2016. This was untrue. The claimant did not swear at a supervisor. The employer notified the claimant that further infractions could result in termination from employment.

On April 29, 2017, the claimant arrived at work and saw that a probationary employee was not doing his job and the other teammates were suffering. The workers learned from the employer that everyone had to work together to reach the goal. There was no supervisor in sight. Some teammates were cleaning up the mess the probationary employee made. The claimant was about ten feet away from him and said in a normal voice, "Why aren't you doing your fucking job?" (This was a normal question the claimant had heard other employees ask co-workers.)

The employee said he was. The claimant asked him why he was lying. The employee never indicated he was afraid of the claimant.

The employer thought the interaction was threatening, violent, and offensive behavior because he used profanity on April 29, 2017. On May 3, 2017, the employer terminated the claimant.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The claimant worked in an environment where swearing was common even though it was prohibited in the policies. The claimant had arguably two incidents of swearing in a little over seven months and was terminated after almost eleven years

of work with no other warnings. In the final instance, the claimant's comments reflected that he wanted the best for the company and its employees. Perhaps he did not use the good judgment when selecting his language, but his conduct did not rise to the level of misconduct. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because he was an eye witnesses to the events for which he was terminated.

**DECISION:**

The representative's June 6, 2017, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/scn