

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROGER M HENKEL
Claimant

APPEAL NO. 13A-UI-12776-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EAGLE WINDOW & DOOR MFG
Employer

OC: 03/10/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 7, 2013, (reference 02) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on December 9, 2013. Claimant participated. Employer participated through human resources generalist Jennifer Shimon and safety and environmental manager Matt Mowry. Thomas Kuiper of Tax represented the employer.

ISSUE:

Was the claimant discharged for disqualifying job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a fabricator from 1989, and was separated from employment on October 15, 2013. On October 8, Mowry was in the claimant's work area on the production floor and was checking volume on radios according to OSHA guidelines. Claimant approached him and said, "I can't believe they pay you to do stupid shit like this." Mowry explained what he was doing. Claimant replied, "How fucking stupid do you think we are? I stand over here, not by the radio where you're holding that thing." Mowry told him that was the way it had to be measured. Claimant told him, "If I can't hear it, I'm going to turn it up." Mowry attempted to speak to him again but claimant dismissed him saying, "I don't want to hear it. I'm done talking to you. Get out of here." Claimant admitted the statements to Shimon but could not remember if he used profanity. It would not have made a difference. He had been warned most recently in writing and suspended for five days on October 19, 2012, about carrying glass without personal protective equipment and calling a coworker appearing to be of Latino descent, "Taco." He was instructed to treat coworkers and supervisors with dignity and respect. On July 11, 2013, supervisor Cindy Chapman spoke to him about his disrespect and insubordinate behavior towards leadership on July 10, after he was told he may have to move to a different part of the line. He said, "If I have to do that, I'm just going to go home." Claimant did not write any comments or request a copy of the document.

Claimant argued that he was discharged because of the length of time he had worked there but did not file a civil rights complaint or speak with human resources about his concern.

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 § 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.

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

Claimant's swearing at Mowry was the most recent example of his repeated failure to treat supervisors and managers with respect. Since he had been warned, the employer has established intentional disqualifying job related misconduct. Benefits are denied.

DECISION:

The November 7, 2013, (reference 02) 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs