

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DJADAME GANGAK KOLANI
Claimant

ALLSTEEL INC
Employer

APPEAL 17A-UI-04956-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/02/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Djadame Gangak Kolani (claimant) filed an appeal from the May 8, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination Allsteel, Inc. (employer) discharged him for causing dissension among his co-workers. The parties were properly notified about the hearing. A telephone hearing was held on June 14, 2017. The claimant participated. The employer participated through Member and Community Relations Business Partner Ryan Zeimet and Focus Factory Manager Ryan Tyrrel and was represented by Pamela Drake of Employers Edge, LLC. French interpretation was provided by Serine (employee number 10686) from CTS Language Link. Employer's Exhibit 1 was received.

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: The claimant was employed full-time as a Work Cell Operator beginning on November 28, 2016, and was separated from employment on April 4, 2017, when he was discharged. The employer has a Fairness and Respect policy that states employees are not to use offensive language or engage in sexual harassment. The employer provided training on this policy to its employees on March 29, 2017. The claimant signed an acknowledgement that he received the training.

On March 30, 2017, the claimant was speaking with a co-worker DH. They were sharing information about their children. DH shared that her oldest child was a 12-year girl. The claimant told DH, "When your daughter turns 16 I'm going to fuck the shit out of her." (Employer's Exhibit 1.) DH became angry and another employee, Randy Wagner, heard the two arguing. DH repeated the claimant's comment to Wagner. The claimant did not deny he made the statement and, when DH asked him for an apology, the claimant stated, "Fuck you." (Employer's Exhibit 1.) DH reported the incident to management.

The incident was reported to Member and Community Relations Business Partner Ryan Zeimet the following day. Zeimet conducted an investigation. During his interview, the claimant

acknowledged what he said to DH; however, he did not show any remorse or apologize for his actions. The employer decided to discharge the claimant based on the severity of his statements and his lack of remorse.

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. Benefits are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

“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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). “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. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following

factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's testimony to be more credible. The claimant denies he engaged in the conduct for which he was discharged. He contends that he was having a discussion about what age DH's daughter would begin having sex which is what caused her to raise her voice. He denied using profanity or stating he wanted to have intercourse with her daughter. The documentation provided contradicts the claimant's testimony. Additionally, at times, the claimant contradicted his own testimony. In one example, he initially testified DH raised her voice at the end of the conversation and he had to tell her to calm down. He later denied she was upset at the end of the conversation.

The employer has an interest in maintaining a fair and respectful workplace. It provides training to its employees about its policies. It has presented substantial and credible evidence that the claimant was acting against the best interests of the employer and other employees by using profanity and making vulgar statements about his co-worker's child. This is misconduct without prior warning. Benefits are denied.

DECISION:

The May 8, 2017, reference 01, unemployment insurance 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn