

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NOLAN C WOODS
Claimant

**DES MOINES REGIONAL TRANSIT
AUTHORITY**
Employer

APPEAL 15A-UI-05348-H2
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 1, 2015, (reference 01) unemployment insurance decision that denied benefits based. The parties were properly notified about the hearing. An in-person hearing was held on June 2, 2015 at Des Moines, Iowa. Claimant participated. Employer did not participate.

ISSUE:

Was the claimant discharged due to job-connected 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 bus driver beginning on February 8, 2011 through April 21, 2015 was discharged.

The claimant normally worked a split shift of morning and late afternoon. When he arrived at work for his morning shift on April 20 he parked his car out in front of the building instead of in the employee parking area. He was not allowed to park there. When the claimant arrived to work his afternoon shift he approached the dispatch window where supervisor Barb was working. Barb asked the claimant where he had parked his car. He did not answer her until after she had asked him three times. The claimant had been previously disciplined for failing to speak to supervisor Barb when she asked him questions. He had been instructed that if he did not want to talk to Barb he was to ask for a union representative. He did not ask for a union representative during this confrontation with Barb. At no time during the conversation did Barb swear at or use profanity when speaking to the claimant. Barb was within her rights as a supervisor to ask the claimant where he parked. As the claimant walked away from the dispatch window he muttered profanity under his breath about Barb and her questioning him. His comments were overheard by two of his coworkers other than Barb who went to the human resources person to complain about the claimant's conduct. The claimant had been given a copy of the employer's handbook and policy manual.

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.

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 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. EAB*, 462 N.W.2d 734 (Iowa App. 1990).

The claimant had parked his car that morning where he should not have. He had been previously instructed in a written warning that he was to answer Barb's questions. In light of the claimant parking where he should not have that morning, Barb's question about where he parked in the afternoon was reasonable under the circumstances. The claimant admits using profanity when speaking in the break room about Barb, a supervisor, asking him a question. While he disagrees with what witness reported he said his comments were by his own admission profanity that caused at least two of his coworkers to complain. The claimant treated Barb disrespectfully and used profanity which is conduct not in the employer's best interests.

The administrative law judge is not persuaded that speaking about a supervisor in profanity-laced terms is acceptable workplace conduct. Under these circumstances the claimant's actions do constitute sufficient job-connected misconduct to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The May 1, 2015, reference 01, 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css