

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL R HENDRICKS
Claimant

APPEAL NO. 10A-UI-11169-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALANIZ LLC
Employer

OC: 07/11/10
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated August 6, 2010, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on September 22, 2010. Although the claimant submitted a telephone number, claimant was not available at the telephone number provided. The employer participated by Mr. Mike Owens, Human Resource Department, and Mr. Curt Rude, Second Shift Supervisor.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Michael Hendricks was most recently employed by Alaniz LLC from June 23, 2006 until July 14, 2010 when she was discharged from employment. Ms. Hendricks held the position of full-time laser operator and was paid by the hour. Her immediate supervisors were Julie Waterman and Neil Schmitz.

Ms. Hendricks was discharged based upon a series of events that occurred on or about July 14, 2010. On that date a company supervisor, Curt Rude, was temporarily using a cart that had been located near Ms. Hendricks' work station. While the claimant was on break, Mr. Rude unloaded materials from the cart at Ms. Hendricks' work station and was using the cart temporarily for other purposes. When the claimant returned from break and found the cart missing, the claimant became very angry, shouting profanities in the presence of other workers.

Mr. Rude returned to the claimant's work area and offered to return the cart, however, Ms. Hendricks continued to be unreasonably angry repeatedly directing inappropriate language

to Mr. Rude in the presence of other workers. When the claimant was advised to adjust her attitude she loudly stated she was not going to change her attitude.

Because of the claimant's outburst and with what the employer reasonably considered to be insubordinate behavior in the presence of other workers, a decision was made to issue Ms. Hendricks a reprimand that day. Although the reason for the reprimand was stated, the claimant continued to display an insubordinate and combative attitude and refused to sign the warning or to acknowledge any fault in the matter. Based upon the claimant's continuing outbursts and what the employer considered to be continuing insubordinate conduct, Ms. Hendricks was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Michael Hendricks was discharged for misconduct in connection with the employment. It does.

Iowa Code section 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.

Since the claimant was discharged the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The 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 or disrespectful or name-calling context may be recognized as misconduct disqualifying the employee from the receipt of unemployment insurance benefits. See Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). The use of foul language alone can be a sufficient ground for a misconduct disqualification for unemployment insurance benefits. Warrell v. Iowa Department of Job Service, 356 N.W.2d 587 (Iowa App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification for unemployment insurance benefits if it serves to undermine a supervisor's authority. Deever v. Hawkeye Window Cleaning, Inc., 447 N.W.2d 418 (Iowa App. 1989).

The evidence in the record establishes that Ms. Hendricks repeatedly acted in an insubordinate manner using profanity and offensive language in a confrontational and disrespectful manner directing her statements and anger towards a company supervisor in the presence of other employees. The administrative law judge concludes that the employer has sustained its burden of proof in establishing intentional disqualifying misconduct on the part of the claimant. Accordingly, Michael Hendricks is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, providing that she is otherwise eligible. The employer's account shall not be charged for benefits paid to the claimant.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The agency representative's decision dated August 6, 2010, reference 02, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided that she is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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