

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES E KNIGHT
Claimant

APPEAL NO. 09A-UI-06683-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALANIZ LLC
Employer

**Original Claim: 02/08/09
Claimant: Appellant (1)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated April 22, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 26, 2009. The employer participated by Kayla Riley, human resources generalist. The claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Kayla Riley.

ISSUE:

The issue in this matter is whether the claimant quit for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a "cutter" for the employer, which is a direct mail printing company. The claimant had two different periods of employment, the latest beginning on April 23, 2007. He was terminated from his employment on March 23, 2009.

The incident that led to his termination occurred on March 19, 2009. A printing job had been improperly cut and the claimant was assigned the task of re-cutting the mailing to the proper size. The claimant was angry about having to do this job, since he was not responsible for the original error. He became so frustrated that he threw a notebook at a supervisor who was walking down the hall. An argument then ensued between them, which included the claimant using a vulgar phrase—"Fuck you." The claimant was told to "Go home." He refused to leave and continued to argue with the supervisor. He was screaming, yelling, and cursing and could be heard by other employees in the plant.

On March 23, 2009, the claimant met with the manager and Ms. Riley as part of an investigation of the incident. The claimant got angry during that meeting and very defensive about his conduct. The decision was then made to terminate the claimant.

REASONING AND CONCLUSIONS OF LAW:

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.

In Myers v. Employment Appeal Bd., 462 N.W. 2d 734 (Iowa App. 1990), the Iowa Court of Appeals considered whether offensive language could be considered misconduct that would disqualify an individual from receiving unemployment benefits. The court of appeals stated:

This court recognizes an employer's right to expect decency and civility from its employees. ... 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. The question of whether the use of improper language in the workplace is misconduct is nearly always a fact question. It must be considered with other relevant factors, including the context in which it is said and the general work environment.

Id. at 738

The evidence in this case established that the claimant directly confronted a supervisor in a confrontational offensive manner and used language that is vulgar and totally inappropriate in the work place. The claimant had a heated exchange with the supervisor that was witnessed by other workers. The claimant's conduct was not a one-time misspeak, but rather was a series of

events, including throwing a notebook at the supervisor, a heated argument, and a refusal to leave, as well as the use of vulgar language. The employer has established misconduct that disqualifies the claimant from benefits.

DECISION:

The decision of the representative dated April 22, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw