

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM J ADAIR
Claimant

APPEAL NO. 12A-UI-05984-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WORKSOURCE INC
Employer

**OC: 07/24/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated May 16, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on June 14, 2012. Claimant participated. The employer participated by Ms. Lori Streeter.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Adam Adair was employed by Worksource Inc. from August 12, 2011 until April 26, 2012 when he was discharged from employment. Mr. Adair was assigned to work at the Siemens Company as a general laborer and was being paid by the hour.

The claimant was discharged following an incident that took place on April 26, 2012. On that date Mr. Adair was given a work-related directive by a lead person. Instead of following the work directive Mr. Adair "flipped" the lead person off stating, "fuck off." The claimant's hand gesture and statement were witnessed by other employees in the work area who reported Mr. Adair's conduct to management. When questioned by his supervisor at the Siemens location, Mr. Adair had no explanation for his conduct. As the company has a zero tolerance for insubordination of work refusals, Mr. Adair was discharged from his employment.

It is the claimant's position that his statement and hand gesture were more in the form of kidding and that he did not believe that they would result in his termination from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. 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.

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. 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. App. 1992).

The evidence in the record establishes that Mr. Adair was discharged from his work assignment after engaging in clearly insubordinate conduct by displaying an inappropriate hand gesture to a lead person and directing an inappropriate statement to the lead person with respect to the work directive that the claimant had been given. The claimant knew or should have known that conduct of that nature was contrary to the employer's interests and standards of behavior and could jeopardize his employment.

Inappropriate statements or gestures towards a supervisor constitute misconduct regardless of whether they are made in the presence of the person who is the object of the disrespectful statements. See Henecke v. Iowa Department of Job Service, 533 N.W.2d 673 (Iowa App.

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

The claimant was discharged because he made inappropriate hand gestures and statements to a lead person after being given a reasonable and work-related directive. The claimant's statements and hand gesture were made with the intention of being disrespectful and undermined the supervisor's authority in the eyes of other employees who witnessed Mr. Adair's action. Accordingly the claimant is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated May 16, 2012, reference 01, is affirmed. 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 his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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