

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NICK J FINK**  
Claimant

**CASEY'S RETAIL COMPANY**  
Employer

**APPEAL 18A-UI-08992-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/05/18**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2) – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Nick Fink, Claimant, filed an appeal from the August 23, 2018, (reference 01) unemployment insurance decision that denied benefits because he was discharged from work with Casey's Retail Company for violation of a company rule. The parties were properly notified of the hearing. A telephone hearing was held on September 13, 2018 at 9:00 a.m. Claimant participated. Employer participated through Ryan Wahl, Software Development Manager. Claimant's Exhibits A through C and Employer's Exhibits 1 through 7 were admitted

**ISSUE:**

Whether Claimant's separation was a discharge for disqualifying job-related 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 computer programmer from July 21, 2014 until his employment ended on August 6, 2018. (Wahl testimony) Claimant's direct supervisor was Ryan Wahl. (Wahl testimony)

On July 20, 2018, during a work-related conversation with another computer programmer named Dylan, claimant described computer code as cobbled together or poorly built. (Wahl testimony) Claimant did not believe Dylan understood what claimant was saying and eventually used the phrase "nigger-rigged" to describe the code. (Wahl testimony) On July 31, 2018, Dylan reported the incident to Ryan Wahl; Dylan reported that it made him uncomfortable, that he believed that he would be able to "get over it," but that it was still bothering him. (Wahl testimony) Ryan Wahl reported the incident to his manager and human resources the following day. (Wahl testimony) An investigation was conducted, which included gathering written statements from both claimant and Dylan, reviewing company policy and conferring with the company's legal department. (Wahl testimony) Claimant's employment was terminated on August 6, 2018 due to violation of a company policy. (Exhibit 2; Wahl testimony; Claimant testimony)

Casey's Retail Company has a policy regarding employee conduct and a harassment free work environment. (Exhibit 6 & 7) The policies provide that all employees are expected to conduct themselves and behave in a manner which leads to the efficient and effective operation of the company and that unethical conduct and the use of profanity are examples of inappropriate conduct that will not be tolerated. (Exhibit 6) The policy warns that employees who violate the policy are subject to corrective action, up to and including termination of employment. (Exhibit 6) Claimant received a copy of the employer's handbook containing these policies. (Exhibit 1) Claimant did not have any previous occurrences of similar conduct. (Wahl testimony)

## **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 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 disqualification shall continue 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or

disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Further, 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). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The issue is not whether the employer made a correct decision in separating 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

It is the duty of the administrative law judge, as the trier of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 evidence you believe; 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer's version of events to be more credible than the claimant's version of those events. Claimant's testimony was inconsistent. Claimant testified that he did not recall using the racial slur during a conversation with his coworker, but then testified that he tried to use other phrases to convey his meaning before using the racial slur. Claimant further testified that using the racial slur was his last choice and that it "didn't come out easily," which shows that claimant understood that it was inappropriate.

Claimant's use of a racial slur in the workplace was not only a violation of a known company policy, but it was also a deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees. Claimant's use of a racial slur is disqualifying work-related misconduct. Benefits are denied.

**DECISION:**

The August 23, 2018, (reference 01) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times his weekly benefit amount.

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Adrienne C. Williamson  
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Decision Dated and Mailed

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