

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEY K WILLIAMS**  
Claimant

**APPEAL NO. 14A-UI-01620-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**OC: 01/19/14**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated February 10, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 5, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Theresa McLaughlin participated in the hearing on behalf of the employer with a witness, Rick Small.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked part time for the employer as a meat cutter from February 11, 2013, to December 23, 2013. Rick Small is the market manager.

The claimant has a chronic problem with his face sweating. He had talked the store manager about needing to wipe off his face and the manager told him he understood.

On December 23, Small observed the claimant go to the backroom for a few seconds to wipe off his face twice in 15 minutes. Small raised his voice and told the claimant that he saw the claimant leave to go to backroom twice. Small said that he was paying the claimant \$11.00 per hour and all he did was go to the back to wipe off his face. When the claimant told Small that it was ridiculous for Small to be yelling at him, Small replied that he was terminated. The claimant swore at Small and walked out of the store.

Small discharged the claimant due to his reaction to Small confronting him about going to the backroom.

**REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that he was told by Small that he was terminated when he told Small that his yelling was ridiculous.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

No willful and substantial misconduct has been proven in this case. The claimant's reaction to the Small's confronting him about wiping off his face did not rise to the level of insubordination. The claimant's use of profanity happened after he was told he was terminated, and therefore was not the reason for his termination.

**DECISION:**

The unemployment insurance decision dated February 10, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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