

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL J SHELTON**  
Claimant

**APPEAL NO. 12A-UI-00696-SWT**

**ADMINISTRATIVE LAW JUDGE  
NUNC PRO TUNC DECISION**

**VAN DIEST SUPPLY CO**  
Employer

**OC: 12/11/11  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated January 12, 2012, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on February 17, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Monty Fisher, attorney at law. Jeff Krausman participated in the hearing on behalf of the employer with witnesses, Carolyn Cross and Lee Trask. Exhibits A and 1 through 6 were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full-time for the employer as a production operator from February 2, 2010, to December 14, 2011. He was informed and understood that under the employer's work rules, the use of profanity or abusive language toward a coworker or a supervisor was grounds for termination.

On December 13, the claimant became upset with a coworker who was swaying back and forth while performing her job. He asked her what the hell she was doing, and when she did not respond, he told her that she need to "fucking stop." When she replied that she was not hurting anything, he told her to "fucking leave." The coworker complained to their supervisor. When the supervisor approached the claimant about what had happened, the claimant told her that she needed to "fucking do something" about the coworker's moving back and forth. The supervisor told the claimant to stop swearing and that she was going to have to report what had happened to the manager. Afterward, the claimant called the coworker a bitch for getting him in trouble.

Management reviewed the situation, took statements from the participants, and asked the claimant what had happened. He told the vice president of manufacturing that he had not been taking medication for a mental health condition and had problems at home affecting him.

Although the claimant may suffer from and receive treatment for a mental illness, the evidence does not establish his conduct toward the coworker and supervisor was not volitional.

On December 14, 2011, the employer discharged the claimant for violating its rules prohibiting the use of profanity or abusive language toward a coworker or a supervisor.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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).

Although the claimant may suffer from and receive treatment for a mental illness, I find that the evidence does not establish his conduct toward the coworker and supervisor was not volitional. The fact that the claimant was short-tempered and irritable may have been affected by his not taking his prescribed medication, but that does not show the claimant did not have any control over his language and conduct toward his coworker and supervisor. The medical records support the fact that the claimant has mental health issues but fall short of demonstrating that he did not willfully violate the employer's work rules. The claimant's testimony that he did not know what he was doing or saying is not supported by any medical evidence.

**DECISION:**

The unemployment insurance decision dated January 12, 2012, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw/kjw