

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL M MUNZ
Claimant

APPEAL NO. 13A-UI-03054-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI STAR MEAT & POULTRY LLC
Employer

OC: 02/03/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Kevin McCain filed a timely appeal from a representative's decision dated March 4, 2013, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on April 11, 2013. The claimant participated. Participating as a witness for the claimant was Ms. Sharon Ingles, production worker/personal friend. The employer participated by Ms. Laura Roney, payroll/human resource assistant; Mr. Carlos Guerrero, plant superintendent; and Ms. Holly Bohr, kill floor supervisor.

ISSUE:

At issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Michael Munz was employed by Agri Star Meat & Poultry, LLC. from March 2, 2010 until January 30, 2013 when he was discharged from employment. Mr. Munz was employed as a full-time production employee working as a kill floor floater. His immediate supervisor was Holly Bohr.

Mr. Munz was discharged on January 30, 2013 following an incident that occurred between Mr. Munz and USDA inspectors that day. Based upon Mr. Munz' conduct the USDA inspectors shut down the company's kill floor and beef production and would not allow production to resume until Mr. Munz was removed from the kill floor.

During the incident, Mr. Munz had been questioned about a sink in the kill floor area whose drain had been plugged. Mr. Munz demonstrated that he was using the reservoir of water to splash on the work floor area to keep it from being slippery. While demonstrating this act, Mr. Munz inadvertently splashed water on the leg of a carcass causing the USDA inspectors to challenge the claimant about his conduct. The USDA inspectors reported that the claimant had responded angrily and that the claimant had used inappropriate language to the USDA inspectors while doing so. Because of this conduct the USDA inspectors said they considered Mr. Munz to be a "threat" and would not allow production to resume until he was removed.

After becoming aware that the production had ceased in the beef kill department and the reason for it, Mr. Munz was summoned to the company offices so that the company could investigate. During the meeting Mr. Munz continued to be angry agreeing that he used the "F" word in response to the USDA inquiries. Claimant continued to be angry and using inappropriate language during the meeting. Because the claimant had previously been reminded on numerous occasions by the plant superintendent, Mr. Gerrero, about using inappropriate language in the kill floor area, the employer considered the USDA inspectors' complaints to be justified and discharged Mr. Munz from employment.

Mr. Munz denies using any inappropriate language or being angry during the incident with the USDA inspectors. It is the claimant's position that the inspectors were retaliating against him because he had earlier filed a complaint about them. The employer was not aware of any complaint being filed.

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. of Appeals 1992).

In this matter the evidence establishes that Mr. Munz had been reminded on a number of occasions by the plant superintendent about his use of inappropriate language in the company's kill floor area. When an allegation was made by USDA inspectors and the plant's beef kill production was stopped because it was alleged that Mr. Munz had angrily directed inappropriate language at a USDA inspector, the employer followed a reasonable course of action by calling Mr. Munz to a meeting in the human resource department to investigate the complaint. During the meeting Mr. Munz continued to be angry and agreed that he used the "F word." During the meeting the claimant continued to display an angry demeanor and using inappropriate language bringing the employer to a reasonable conclusion that the USDA's complaints were valid. Based upon the nature of the complaint and its effect upon the company a decision was made to terminate Mr. Munz from his employment.

An employer and/or governmental inspectors assigned to work at an employer facility have the right to expect decency and civility from employees and an employee's use of profanity or offensive language in a confrontational disrespect or a name calling context may be recognized as misconduct disqualifying the claimant from the receipt of unemployment insurance benefits. See Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language alone can be sufficient grounds for misconduct disqualification from unemployment insurance benefits. Warrell v. Iowa Department of Job Service, 356 N.W. 2d 587 (Iowa App 1994). An isolated instance of vulgarity can constitute misconduct and warrant disqualification from unemployment insurance benefits if it serves to undermine the authority of a person in a supervisory position. Deever v. Hawkeye Window Cleaning Inc., 447 N.W. 2d 418 (Iowa App 1989).

The evidence in the record establishes that the claimant's discharge was based upon the employer's reasonable conclusion that the claimant had acted inappropriately by directing inappropriate language to a government inspector. Claimant had previously repeatedly engaged in a similar conduct and had been counseled about his conduct and the claimant had made an admission during the meeting about the incident. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated March 4, 2013, reference 01, is affirmed. 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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