

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMY S MOHAMED

Claimant

APPEAL NO. 14A-UI-03194-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURKE MARKETING CORPORATION

Employer

OC: 03/02/14

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated March 20, 2014, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on April 15, 2014, by telephone conference call. The claimant participated personally. The claimant was represented by Luke Guthrie, Attorney at Law. The employer participated by Terry Ubben, Human Resources Manager, and Gene Thompson, sanitation supervisor. The record consists of the testimony Terry Ubben; the testimony of Gene Thompson; the testimony of Samy Mohamed; and Employer's Exhibits 1-14.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures food at its facility located in Nevada, Iowa. The claimant was hired on July 11, 2005, as a full-time sanitation worker. His last day of work was February 18, 2014. He was terminated on February 25, 2014, for insubordination.

The incident that led to the claimant's termination occurred on February 18, 2014. The claimant was assigned to clean the front of some pizza ovens. The claimant was having difficulty doing the job and so the claimant was moved to line 2. The difficulties continued on line 2. The claimant was not cleaning the ovens up to the standards of the employer. He was then moved to "parts", which the employer considered "a little easier." The claimant refused to do the job. He got angry and told his supervisor, Gene Thompson: "Fuck you, I'm out of here." The claimant then walked off the job. He was suspended pending an investigation and then terminated for insubordination on February 25, 2014.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Profanity or other offensive language in a confrontational or disrespectful context may constitute misconduct, even in isolated situations or in situations in which the target of the statements is not present to hear them. See Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990). In Henecke v. IDJS, 533 N.W.2d 573 (Iowa App. 1995), the Iowa Court of Appeals stated that an employer has the right to expect decency and civility from its workers. The employer has the burden of proof to show misconduct. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The evidence showed that the claimant refused to do a job to which he had been assigned. He got angry and used vulgar and profane language and then walked off the job. The use of profanity clearly violated the claimant's duty of decency and civility. His refusal to do a job was insubordination. He compounded the situation by walking off the job, which is further proof of insubordination. The claimant offered no explanation that would excuse his actions. The administrative law judge concludes that the employer has established disqualifying misconduct. Benefits are denied.

DECISION:

The decision of the representative dated March 20, 2014, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefits amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

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