

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ENRIQUE A RAMIREZ
Claimant

APPEAL NO. 09A-UI-16423-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 09-27-09
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 23, 2009, reference 05, decision that denied benefits. After due notice was issued, a hearing was held on December 7, 2009. The claimant did participate through the interpretation of Celia Juante. The employer did participate through Monica Dyar, Human Resources Representative. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a production worker full time beginning April 27, 2009 through September 29, 2009 when he was discharged.

The claimant was discharged for mistreating his coworkers and for using profanity when speaking to his coworkers. On September 18 the claimant was interfering with Patrick Webster who was attempting to help Jose Jimenez perform his job functions. The claimant told Mr. Webster that he was "tired of the Puerto Rican's big fucking mouth." The claimant also called Mr. Jimenez a "fucking asshole." After conducting an investigation the employer discharged the claimant for use of profanity and for derogatory comments and statements toward other employees.

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.

Iowa Code § 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 use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990).

The claimant admitted his use of profanity. Additionally, the administrative law judge is persuaded that the claimant made derogatory statements about the nationality of his coworkers and acted to intimidate or harass them. Such conduct is not in the employer's best interests and is sufficient misconduct to disqualify the claimant from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The October 23, 2009, reference 05, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css