

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM G STANFORD JR
Claimant

APPEAL NO: 08A-UI-09379-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

S & J TUBE INC
Employer

**OC: 12/09/07 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

William G. Stanford, Jr. (claimant) appealed a representative's October 9, 2008 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from S & J Tube, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 29, 2008. The claimant participated in the hearing. Julie Belger appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 29, 2008. He worked full time as a production worker at the employer's steel component manufacturing business. His last day of work was September 17, 2008. The employer discharged him on that date. The stated reason for the discharge was use of foul language.

The claimant started his shift on September 17 as scheduled at 5:30 a.m. While the claimant normally did a different function, at approximately 6:15 a.m. his team lead instructed him to assist in stuffing insulation, as a lack of staff in that area was causing a slow down to production generally. The claimant resisted, stating that the insulation made him itchy. He had handled the insulation the day prior, and wanted a day's break from handling it so that his skin would calm down before handling it again. The team lead then directed him to transfer some hang rails.

The claimant went to another area of the facility and was near a coworker. He testified that he was waiting for a box from that coworker so he could transfer the hang rails, but his team lead and his supervisor saw him standing there, and assumed he was merely loafing. They approached him and asked why he was not working. The supervisor inquired as to whether the

claimant had declined to do the work as directed by the team lead. The claimant then turned away, saying he was going to “go do my f - - - ing job.” The team lead heard what the claimant said, but the supervisor had not fully heard him, so she asked him to repeat it, so he did. The employer’s policies, of which the claimant was aware, strictly prohibit the use of vulgar language. As a result of the claimant’s comment, the supervisor told him to leave, that he was discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

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. Myers v. Employment Appeal Board, 462 N.W.2d 734, 738 (Iowa App. 1990). The claimant's use of foul language in this context was disrespectful toward his supervisor and team lead and shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative’s October 9, 2008 decision (reference 03) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving

unemployment insurance benefits as of September 17, 2008. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs