

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARRIE L PENDLETON**  
Claimant

**APPEAL NO. 11A-UI-11227-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GRIMM BROTHERS PLASTICS CORP**  
Employer

**OC: 07/24/11  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Grimm Brothers Plastics Corporation (Grimm), filed an appeal from a decision dated August 15, 2011, reference 01. The decision allowed benefits to the claimant, Carrie Pendleton. After due notice was issued, a hearing was held by telephone conference call on September 19, 2011. The claimant participated on her own behalf. The employer participated by Human Resources Manager Linda Wilson. Exhibits One and Two were admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Carrie Pendleton was employed by Grimm from December 27, 2000 until July 21, 2011 as a full-time production worker. In the last 12 months of her employment she had received written and verbal warnings about various problems such as leaving the work place without permission and having a “negative attitude” and was “negatively vocal.”

On July 19, 2011, two engineers, Joann and Kyle, entered the claimant’s work area and began rearranging things to make a space where they could work. They were putting good parts with bad parts and generally disrupting Ms. Pendleton’s arrangements. When she suggested they use another table about ten feet away which was empty, Joann said that she did not want to walk that far. The claimant was irritated and began to rearrange her work area after the disruption. She muttered “fucking shit” under her breath. The engineers heard it and reported the matter to Operations Manager Pete Aretz. The matter was reviewed by him along with Human Resources Manager Linda Wilson. The claimant was discharged on July 21, 2011, for profane language.

The claimant admitted to making the comment but also stated such language was common in the production area and used daily by supervisors and co-workers.

## 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.

In order to be disqualified from receiving unemployment benefits there must be a current, final act of misconduct which precipitates the decision to discharge under 871 IAC 24.26(8). The final incident was the claimant muttering an obscenity under her breath which was overheard by the engineers who had disrupted her work area. The employer did not dispute the engineers had simply walked into Ms. Pendleton's work area and began moving things about to satisfy themselves rather than consulting with her about how they could all work together. This appears to be a deliberate act of provocation against the claimant in addition to be unprofessional and discourteous.

The claimant acknowledged she muttered an obscenity under her breath when she was forced to rearrange her work area after the engineers had disrupted it. The comment was not directed at any particular person but was a manifestation of her frustration. The employer did not dispute the claimant's testimony that bad language was not unusual in the production area. Isolated incidents of vulgar language where decorous language is not required is "unsatisfactory conduct" or a "mere peccadillo" rather than job misconduct. *Budding v. IDJS*, 337 N.W.2d 219, 223 (Iowa App. 1983).

The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364

N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial."

The administrative law judge concludes the claimant's conduct which precipitated the discharge does not rise to the level of substantial misconduct sufficient to warrant a denial of unemployment benefits.

**DECISION:**

The representative's decision of August 15, 2011, reference 01, is affirmed. Carrie Pendleton is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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