

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**RYAN A THOMPSON**  
Claimant

**JELD-WEN INC**  
Employer

**APPEAL 16A-UI-10046-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/31/16**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 8, 2016, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on September 29, 2016. The claimant participated personally. The employer participated through Sharon Miller, human resources assistant. Claimant exhibit A and Employer exhibits 1 through 18 were received into evidence. Based on the evidence, the arguments presented, 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 disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an exterior door builder and was separated from employment on July 27, 2016, when he was discharged.

The employer has a policy prohibiting abusive or harassing language, and the claimant was made aware of the employer's policies upon hire (Employer exhibits 17 and 18). Prior to discharge, the claimant had been issued a final written warning on January 29, 2016, in response to a verbal altercation that occurred with an employee on January 27, 2016 (Employer exhibit 16). In the warning, the claimant was made aware that future incidents could result in his discharge (Employer exhibit 16).

The claimant had ongoing conflict with his co-worker, Chris Scott, and reportedly told his management that he wanted to move departments prior to the final incident. The claimant did not escalate any concerns to human resources. On July 19, 2016, a disagreement ensued between the claimant and Mr. Scott regarding the fixing of a door. According to the claimant, Mr. Scott called the claimant a “dumbass”, “asshole” and “worthless”. The claimant responded by telling Mr. Scott, that “just because you are having a bad day, doesn't mean you have to be a dick.” The argument escalated and Mr. Scott at one point said he wanted to “fuck up” the

claimant. The claimant responded by saying “bring it on bitch” and stated if he (Mr. Scott) was going to hit the claimant, to just do it. Management was not in the vicinity at the time, and human resources was located across the plant. Several employees witnessed the exchange (Employer exhibits 8 through 13). The claimant did not walk away from Mr. Scott to report the potential threat or language, but instead Mr. Scott reported the claimant. Following an investigation, the claimant was discharged. Mr. Scott was not discharged but instead offered a final written warning and anger management courses.

## **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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep’t of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the

evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

"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. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). The credible evidence presented is that the claimant was warned on January 29, 2016 after a verbal altercation that abusive or profane directed at a peer violated the employer's policies (employer exhibit 16) and was aware his job was in jeopardy as a result. While the administrative law judge recognizes the claimant may not have initiated the confrontation on July 19, 2016 between the claimant and Mr. Scott, the administrative law judge is not persuaded that the claimant had no other option but to respond by way of profanity. Certainly it may not have been easy, but the claimant could have ignored the insults by Mr. Scott, or alternately reported to management or human resources that he was being verbally provoked by Mr. Scott. At a minimum when Mr. Scott threatened to "fuck up" the claimant, he could have walked away and immediately reported the incident. The claimant knew or should have known engaging in another verbal confrontation with profane language violated the employer's reasonable policies. Misconduct has been established. Benefits are denied.

#### **DECISION:**

The September 8, 2016 (reference 01) 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.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/rvs