

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW L GITCH
Claimant

APPEAL NO. 06A-UI-09941-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

METRO AREA REDEMPTION INC
Employer

**OC: 09/03/06 R: 03
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Matthew Gitch, filed an appeal from a decision dated October 4, 2006, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on October 24, 2006. The claimant participated on his own behalf. The employer, Metro Area Redemption, participated by Owner Chet Hay.

ISSUE:

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

FINDINGS OF FACT:

Matthew Gitch was employed by Metro Area Redemption from June 5 until September 6, 2006. He was a full-time can sorter.

On September 5, 2006, the claimant's shift ended at 3:30 p.m. The usual procedure is for employees to work until 3:30 p.m. and then go to punch out. The claimant went to the bathroom about 3:25 p.m. and after leaving the bathroom he washed his hands and went to the time clock, where he was standing for about two minutes waiting to punch out.

Owner Chet Hay was not present but acting manager Tom Reichs told the claimant it was not acceptable for him to be standing around at the time clock waiting to punch out at 3:30 p.m., and told him to just punch out and go home. The claimant became angry and verbally abused Mr. Reichs, calling him a "fat fuck." He declared he did not have to listen to anyone and that he "set his own hours." He was told to leave and he finally did.

The incident was reported to Mr. Hay, who called the claimant the next day and fired him.

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.

The claimant was discharged for verbally abusing the acting manager. He was being insubordinate by timing his bathroom break to a time immediately before leaving and did not provide any information as to why a trip to the bathroom was necessary at that time instead of waiting a few minutes until he was off duty. He was waiting by the time clock instead of working until 3:30 p.m. as required.

Calling his supervisor a "fat fuck" is not only disrespectful, but insubordinate and entirely out of line. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of October 4, 2006, reference 03, is affirmed. Matthew Gitch is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw