

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAUL RUIZ

Claimant

APPEAL NO: 17A-UI-06563-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 05/14/17

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 19, 2017, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge, Julie Elder on July 17, 2017. The claimant participated in the hearing. Melissa Lewien, Risk Management, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time warehouse employee for Advance Services last assigned to Syngenta Seeds from October 3, 2016 to April 5, 2017. He completed his assignment but then proceeded to yell and use profanity toward one of the employer's employees and as a result of that behavior his employment was terminated.

The claimant was scheduled to begin his shift at Syngental at 7:00 a.m. On April 3, 2017, the claimant was a no-call/no-show. On April 4, 2017, he texted his manager at Syngenta at 11:42 a.m. to say he did not feel well. Employees are required to notify both the client and the employer before the start of their shift if they are going to be late or absent. He did not notify the employer. On April 5, 2017, the claimant did not have a ride to work and called the client supervisor at 8:00 or 9:00 a.m. before beginning the one and one-half hour walk to work. Shortly after the claimant arrived for work the client notified him the assignment was over due to his attendance and the fact there was no work remaining.

The claimant had called Human Resources Coordinator Imelda Lozano April 3, 2017, to ask if the assignment was ending April 7, 2017, stating he wanted to return to Texas and see his family (Employer's Exhibit One). Ms. Lozano indicated the assignment was scheduled to end Friday, April 7, 2017. The claimant called Ms. Lozano April 5, 2017, and stated he had reported for work that day but was told his assignment was terminated and he should contact Ms. Lozano

with any questions he had about the situation. The claimant asked why his employment was terminated without someone notifying him. Ms. Lozano explained she did not have a current phone number for the claimant. The claimant replied, "That is bullshit," and that he "knew how this shit worked and that he will call unemployment" (Employer's Exhibit One). He continued yelling at Ms. Lozano saying he, "fucking worked for this company and it was fucked up that he stayed to help the company and this was fucking stupid" (Employer's Exhibit One). The claimant called Ms. Lozano back later and said "no one knew why he was terminated" and Ms. Lozano explained it was due to his attendance issues and no-call/no-show absences (Employer's Exhibit One).

The claimant received a copy of the employer's Orientation Packet, which included the Conduct Policy, and signed for those policies October 4, 2016 (Employer's Exhibits Two and Three). The Conduct Policy requires employees to conduct themselves in an appropriate manner at all times whether on assignment or in the employer's office (Employer's Exhibit Two). It also states the employer "will not tolerate any type of misconduct (including but not limited to, verbal or physical abuse of others, harassment, threatening or intimidating behavior, excessive profanity, etc.) (Employer's Exhibit Two). The Conduct Policy further states, "I understand that failure to conduct myself in an appropriate manner will result in disciplinary action up to and including termination of employment" (Employer's Exhibit Two).

The claimant would have been eligible for another assignment had he not violated the employer's Conduct Policy when using profanity in anger when speaking to Ms. Lozano. That behavior resulted in the claimant's termination of employment.

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 section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

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). An employer has the right to expect decency and civility from its employees. *Henecke v. IDJS*, 533 N.W.2d 573 (Iowa App. 1995).

The client asked that the claimant be removed from his assignment two days before that assignment was to end because he was a no-call/no-show April 3, 2017; failed to properly report his absence April 4, 2017; and was several hours late April 5, 2017, because he did not have a ride to work. The client's decision to end the claimant's assignment was not unreasonable but under Iowa law the claimant is considered to have completed the assignment.

When working through a temporary employment firm, employees are required to contact the temporary agency employer within three working days of the completion of the assignment to notify the employer he is available for another assignment. While the claimant did contact the temporary agency, he did not inquire about a further assignment. Instead, he was angry and used profanity freely when speaking to Ms. Lozano. The claimant's actions when talking to Ms. Lozano violated the employer's Conduct Policy which the claimant signed for October 4, 2016. In addition to the employer's prohibition against using profanity in an abusive manner, profanity was not commonly used by the temporary employment agency employees, especially in anger, and common sense should have informed the claimant that his actions would not be tolerated.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The June 19, 2017, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn