

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WHITNEY M WHITEHEAD
Claimant

APPEAL NO. 13A-UI-06664-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAR-FRESHNER CORPORATION
Employer

OC: 05/05/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated May 31, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice, an in-person hearing was held on August 8, 2013, in Davenport, Iowa. The claimant participated personally. The employer participated by Kelly Galloway, Supervisor, and Chris Walters, Human Resources Manager. The record consists of the testimony of Chris Walters; the testimony of Kelly Galloway; and the testimony of Whitney Whitehead.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures the "little trees" that are used in vehicles for odor control. The employer has a facility located in DeWitt, Iowa. The claimant was hired on September 7, 2012, as a full-time machine operator. Her last day of work was May 9, 2013. She was terminated on May 9, 2013.

The incidents that led to the claimant's termination occurred on May 9, 2013. Some confusion had arisen on the exact number of attendance points that had been accumulated by the claimant. Chris Walters, human resources manager, had met with the claimant on May 8, 2013, and May 9, 2013. During the meeting on May 9, 2013, the claimant became very belligerent. She was angry and accused the employer of making a mistake on her attendance points. The claimant wanted to control the meeting. The claimant constantly talked over Ms. Walters and had to be told repeatedly to "Stop." Because of the claimant's attitude and verbal outbursts, Ms. Walters decided to end the meeting and send the claimant home.

The claimant continued to argue with her supervisor, Kelly Galloway. Ms. Galloway escorted the claimant to her machine so that the claimant could retrieve her purse. The claimant was still

angry and finally told Ms. Galloway to “fucking write me up for being sent home.” Ms. Galloway was shaking and was unsure of what the claimant might do. The claimant eventually did go home. The decision was then made to terminate the claimant.

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.

Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Profanity or other offensive language in a confrontational or disrespectful context may constitute misconduct, even in isolated situations or in situations in which the target of the statements is not present to hear them. See Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990). In Henecke v. IDJS, 533 N.W.2d 573 (Iowa App. 1995), the Iowa Court of Appeals stated that an employer has the right to expect decency and civility from its workers. The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The greater weight of the credible evidence showed that the claimant breached her duty of decency and civility when first meeting with Ms. Walters and then cursing at Ms. Galloway. The claimant's own conduct during the hearing was also belligerent and disrespectful. Despite several admonishments from the administrative law judge, the claimant kept interrupting the employer during the employer's testimony. The claimant tried to talk over the administrative law judge. This conduct during the hearing likely mirrors what the claimant did in her meeting with Ms. Walters and her later

statements to Ms. Galloway. Ms. Galloway's testimony that the claimant used vulgar language toward her is accepted. There is no excuse for this type of behavior, even if the claimant felt strongly about her attendance points. The employer has shown misconduct. Benefits are denied.

DECISION:

The decision of the representative dated May 31, 2013, reference 01, is affirmed. Unemployment insurance benefits are withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css