

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID J NISLEY
Claimant

APPEAL NO. 14A-UI-03383-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SACHS ELECTRIC CO
Employer

**OC: 11/10/13
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated March 21, 2014, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on April 21, 2014, by telephone conference call. The claimant participated personally. The employer notified the agency in writing that it would not be participating in the hearing.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

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

The claimant is a union electrician who starting working for the employer full time in November 2013. The claimant worked at a data center in Council Bluffs, Iowa. The claimant's last day of work was March 4, 2014. He was terminated on March 4, 2014.

The incident that led to the claimant's termination occurred on March 4, 2014. The claimant walked through a doorway which was marked "Do Not Enter." He had made a few steps when the sign was pointed out to him by another employee. The general contractor had seen this claimant go through the door way and so he grabbed the claimant's arm and pointed out the sign. He said: "What's wrong – can't you read?" The claimant did not realize that this was the general contractor, and he responded "Go fuck yourself." The claimant was then told he was terminated.

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 that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. 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 legal definition of misconduct excludes errors of judgment or discretion in isolated instances. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The employer elected not to participate in the hearing and the exact reason why he was terminated is not known. The claimant testified that he was terminated after he told the general contractor to go fuck himself. The claimant did not know that the person who was yelling at him was the general contractor. He said that he took offense at the person who was yelling at him and responded in kind. It can be fairly assumed, however, that the claimant was terminated because he used profanity when talking to the general contractor. The administrative law judge concludes that the claimant

reacted to what he considered offensive speech with offensive speech of his own. Although cursing at any employee is usually uncalled for, the administrative law judge concludes that this response from the claimant was an error of judgment or discretion in an isolated instance. The employer has not provided sufficient evidence to show that the claimant was discharged for disqualifying misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated March 21, 2014, reference 01, is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs