

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**KERRY R OLSSON
3603 CEDAR KNOLL CR LOT 144
WATERLOO IA 50701**

**BERTCH CABINET MFG INC
PO BOX 2280
WATERLOO IA 50704**

**Appeal Number: 04A-UI-12138-SWT
OC: 10/17/04 R: 03
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 3, 2004, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on December 7, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Mitzi Tann participated in the hearing on behalf of the employer with a witness, Wes Miller. Exhibits One through Four and A were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer from September 4, 1995 to October 14, 2004. Her job when her employment ended was a customer panel stager, and her supervisor was Wes Miller. The claimant was informed and understood that under the employer's work rules, fighting or using obscene or abusive language was grounds for disciplinary action up to and

including termination. The claimant had received previous warnings and suspensions for violating this work rule on February 23 and May 11, 2004. The May 11, 2004, warning notified the claimant that any further violations of this nature would result in her termination.

On October 14, 2004, the claimant and three other employees were called into the supervisor's office and cautioned to keep talking to a minimum. The claimant mistakenly believed that two of the employees who were brought into the office first had tried to shift the blame to her. This upset her because she had been talking about a work-related matter. As she returned to her work area, she said that she was sick and tired of the "fucking bitches" trying to get her fired. She said this knowing that the two employees to whom she was referring could hear what she said. When one of them tried talking to her, she told the employee, "Don't fucking talk to me."

The claimant was called back to the office and was very emotional. She would not answer any questions and asked to leave. She was allowed to leave. When she left the room, she slammed the door. She was escorted out of the building.

On October 18, 2004, the employer discharged the claimant for her conduct on October 14, 2004, which violated the work rule prohibiting fighting, profanity, and abusive language.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. She had been warned that her job was in jeopardy due to similar conduct in the past. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated November 3, 2004, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

saw/kjf