

On September 17 while speaking to a customer the claimant referred to the President of the United States as an "asshole." The customer called in and complained about the comment the claimant made referring to the President. At hearing the claimant would only admit that he may have made comments that were critical of the President.

On September 14, 2005, the claimant was given a final written warning for making "oinking" noises when speaking to a coworker. The claimant referred to a female coworker as a "fucking lazy cunt." Chris Nelson, a supervisor at EDS, informed the Kelly Service representative what had occurred. The claimant admitted that he may have used the "f-word" while speaking to a coworker but denies using the "c-word."

On August 4, 2005, a customer complained about the claimant berating her and telling her to give him her zip code faster the next time he asked for it. When the customer asked to speak to the claimant's supervisor, he hung up on her. The customer called back and complained to management who verbally warned the claimant about his behavior. The claimant admits he made the zip code remark to the customer but alleges he was having such a busy day he could not help himself and that he regretted the comment as soon as it happened.

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:

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 had been previously warned and disciplined about untoward or inappropriate comments to coworkers and to customers. The claimant is certainly entitled to any opinion he so chooses, but he knew or should have known that referring to the President of the United States in a disparaging manner while speaking to customers could have the potential for offending those who do not share his opinions. The claimant admits making "critical" remarks regarding the President while speaking to a customer of the employer. His conduct in conjunction with his history of discipline for the same or similar conduct is sufficient misconduct to disqualify him from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The October 6, 2005, reference 03, 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.

tkh/tjc