

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLEN R WASHAM
Claimant

APPEAL NO: 06A-UI-10478-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OLYMPIC STEEL IOWA INC
Employer

**OC: 10/08/06 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Allen R. Washam (claimant) appealed a representative's October 26, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Olympic Steel Iowa, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known address of record, a telephone hearing was held on November 9, 2006. The claimant participated in the hearing. Brian Rolf, Bill Mess, Gary Willet and Kathy Truelson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 9, 2005. The claimant worked as a full-time shop helper. The claimant's most recent supervisor was Mess. The claimant knew and understood the employer did not allow employees to sexually harass other employees. The claimant also knew the employer did not allow employees to create a hostile work environment.

The claimant worked in his last job for three or four months. The claimant did not like working in that department and tried unsuccessfully to transfer to his previous job. From the day the claimant started in his most recent job, a female employee, L.P. treated him rudely. The claimant did not say anything to anyone because he concluded L.P. was rude to everyone.

In August 2006, the claimant became very upset with his foreman after he reprimanded the claimant for going to the restroom too much. While the claimant was upset, he made comments that it was understandable why some people went "postal" and that he felt like punching someone. The employer talked to the claimant, got the claimant to calm down and reminded him that comments like this were not appropriate in the workplace. The claimant acknowledged he made the comments in anger and should not have made the comments.

In July the claimant started taking prescription medication for a medical situation. The claimant also had problems sleeping at night. As a result there were days he was very irritable when he was at work. In September some employee complained that the claimant not doing his share of work, that he was sleeping on the job, and that he left work or went on breaks early. The employer did not have any evidence to substantiate these complaints.

On October 6, the claimant had not slept well the night before. L.P. was again rude to him. Instead of ignoring LP.'s rudeness, the claimant asked her, "Why are you also such a bitch when I talk to you?" L.P. told the claimant not to talk to her and he told her not to talk to him either then. L.P. then filed a formal complaint against the claimant for sexually harassing her.

The employer talked to people who heard part of the conversation. They heard and the claimant admitted he called L.P. the B word. When L.P. complained, she reported that the claimant had made another derogatory remark to her. The claimant denied making the additional comment and none of the other employees heard the additional comment.

The employer discharged the claimant on October 6 for creating a hostile work environment when he talked to L.P. The claimant acknowledged his use of the B word was not appropriate. Since L.P. regularly uses profanity at work, he did not think she would be offended by that word.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for discharging the claimant. The claimant's choice of word when asking L.P. why she acted toward him in the way she did is not condoned and was not appropriate. It is understandable why L.P. filed a formal complaint against the claimant. Under the facts of this case, the claimant's choice of words does not amount to an intentional or substantial disregard of the standard of behavior the employer had a right to expect from him since L.P. used profanity at work. The facts do not establish that the claimant committed a current act of work-connected misconduct. Therefore, as of October 8, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's October 26, 2006 decision (reference 01) is reversed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of October 8, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs