

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS J JENSEN
Claimant

APPEAL NO. 12A-UI-07382-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VH MFG INC
Employer

OC: 03/04/12
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Travis Jensen, filed an appeal from a decision dated June 12, 2012, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 16, 2012. The claimant participated on his own behalf. The employer, VH Mfg., participated by Human Resources Administrator Debbie Schilling, Accountant Sonia Ranschau, Scheduler Cara Vermeer, Supervisor Duane Van't Hul, and Production Worker Taylor Johnson.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Travis Jensen was employed by VH Manufacturing from April 3 until May 25, 2012 as a full-time production worker on a 90-day new employee probation. He had received verbal and written warnings regarding his chronic absenteeism. On one early occasion in April 2012 when Human Resources Administrator Debbie Schilling was issuing him a warning, he became loud and defensive, refusing to sign the warning. Others workers in separate offices heard his bad language and loud, hostile tone of voice.

On May 23, 2012, Ms. Schilling met with the claimant in the conference room at 8:00 a.m., one hour after the start of his shift. She was going to issue another warning for absenteeism. In addition, Ms. Schilling mentioned he had made three trips to the bathroom and break room already that morning, after one trip he had a bottle of Gatorade in his hand.

Again he became hostile and abusive, saying it was “fucking illegal” to tell him he could not go to the bathroom. The employer told him the bathroom breaks were not the issue but spending time in the break room when he should have been working. He maintained he was only getting a bottle of Gatorade and when Ms. Schilling said there were water fountains in the work area, he agreed but said there were no cups. This was the first time Mr. Jensen even mentioned to the human resources administrator that there were no cups by the drinking fountain.

Mr. Jensen was so loud and hostile Schedule Cara Vermeer contacted a male employee to come to the office in case the claimant became physically aggressive. He left before the other employee arrived, but Ms. Vermeer saw and heard him hit the door to the work area very hard while he continued to make loud comments.

Ms. Schilling went to Mr. Jensen's work area shortly thereafter and told him it was inappropriate for him to be yelling and cursing and if it happened again, he would be suspended for three days. He started the same argument, stating it was "fucking illegal" for her to forbid him to go to the bathroom and again she reiterated it was not going to the bathroom that was the problem but stopping in the break room.

After that, the administrator returned to her office and filled out the documents for a three-day suspension. She presented the paperwork to Mr. Jensen, accompanied him to the locker room and then to the parking lot, where he was to wait for a ride home. While they were waiting, he made an accusation that Supervisor Duane Van't Hul had grabbed him and shouted at him about a week before., and co-worker Taylor Johnson was a witness. Ms. Schilling said she would investigate.

After the claimant left she did speak with Mr. Johnson, who said Mr. Jensen had talked to him before he left on May 23, 2012, and notified him he had made the accusation against Mr. Van't Hul. Mr. Johnson told him, and Ms. Schilling when she investigated, he had seen nothing of such an incident and had never seen the supervisor grab anyone. Mr. Van't Hul remembered the incident and admitted he had taken hold of Mr. Jensen's shoulder because he was afraid the claimant was going to re-injure his shoulder when he was pushing something into a kiln.

The claimant's suspension was May 23, 24, and 25, 2012. During that time, Ms. Schilling had done the investigation and discussed the series of events with the co-owners. The decision was made to discharge the claimant for insubordination, excessive absenteeism, and making false accusations. She notified the claimant of this by phone on May 25, 2012, rather than wait until he returned to work on Tuesday, May 29, 2012, because he had a long drive to work and she did not want him to make the trip needlessly.

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.

The record establishes the claimant was hostile, uncooperative and insubordinate when the human resources administrator was issuing him a warning about absenteeism. He used bad language, was physically demonstrating his anger and his defiance, and refused to sign the warning. The failure to acknowledge the receipt of a written reprimand by signing it constitutes job misconduct as a matter of law. *Green v. IDJS*, 299 N.W.2d 651 (Iowa 1980).

The claimant is guilty of misconduct for refusing to sign the warning and his inappropriate, threatening behavior. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of June 12, 2012, reference 02, is affirmed. Travis Jensen is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw