

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MORICE D JONES
Claimant

APPEAL NO. 13A-UI-03899-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON STAFFING CO LC
Employer

OC: 03-03-13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 25, 2013, reference 01, decision that denied benefits. After due notice was issued, an appeal hearing was held on May 15, 2013 in Des Moines, Iowa. The claimant did participate. The employer did participate through (representative) Mike Dubberke, Account Manager; Alejandra Rocha, Assistant Operations Manager; Frank Tursi, Senior Operations Manager; Jeff Dotson, Account Manager; and Brice Heaberlin, Account Manager. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was last assigned to work at Titan Tire distribution beginning on June 21, 2012 full time as a tire mounter through March 4, 2013 when he was discharged. On February 8, 2013 the claimant was given a final written warning after using profanity when speaking to Ms. Rocha on the telephone. The claimant knew from his receipt of the company handbook or policy book that use of profanity when speaking toward employees was not allowed. Additionally, the claimant knew that any type of harassment toward fellow employees was not allowed. The claimant did sign the final written warning and was an employee at that time he signed it.

Later in February the claimant later was sleeping on the job due to low blood sugar problems. His conduct was reported by his coworkers to the supervisor who investigated. The claimant was angry that his coworkers had reported him sleeping on the job. The claimant knew or should have known that having low blood sugar to the point where he fell asleep would make the employer unsure that he was safe to drive a forklift in order to protect his safety and that of his coworkers.

On March 4, 2013 the claimant threatened a coworker, Jerry. The claimant called Jerry a "motherfucker" and threatened his family. Jerry immediately reported the incident to the

supervisor who investigated. An additional witness provided a written statement to support Jerry's allegations. Mr. Tursi was called to come to the plant in the middle of the night to deal with the situation. The claimant did threaten Jerry and Jerry's family members. He was discharged by Mr. Tursi on March 4 for threatening a coworker.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The administrative law judge is persuaded that the claimant used profanity when speaking to Ms. Rocha on February 4, 2013. He was given a final warning on February 8, 2013 for using profanity and knew or should have known that even one additional incident would lead to his discharge. The administrative law judge is similarly persuaded that the claimant did threaten Jerry and his family with physical harm on March 4 and did call Jerry a "motherfucker." There was no conspiracy by management to end the claimant's employment. The claimant was simply angry and did threaten Jerry. Such conduct is unacceptable and was a clear violation of the employer's policies. The claimant had multiple prior warnings and his threat after receipt of his final warning is sufficient misconduct to justify denial of unemployment insurance benefits. Benefits are denied.

DECISION:

The March 25, 2013 (reference 01) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs