

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SIMON C TOOSON**  
Claimant

**APPEAL NO: 06A-UI-09022-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FLYING J INC**  
Employer

**OC: 08/13/06 R: 03**  
**Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Flying J, Inc. filed an appeal from a representative's decision dated August 31, 2006, reference 02, which held that no disqualification would be imposed regarding Simon Tooson's separation from employment. After due notice was issued, a hearing was held by telephone on September 25, 2006. The employer participated by Anita Manifold, General Manager, and Brenda Hanson, Assistant Manager. The employer was represented by Leslie Buhler of Talx Corporation. Mr. Tooson did not respond to the notice of hearing.

**ISSUE:**

At issue in this matter is whether Mr. Tooson was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Tooson began working for Flying J, Inc. on January 26, 2006 as a full-time cook. On August 10, he became upset when he realized he had misread the work schedule for that day. He was in the break room talking with the general manager at the time. She asked him to calm down. Mr. Tooson responded by saying. "I'm a "grown-ass man and can talk to you any way I want, motherfucker." The statement was overheard by the assistant manager. The general manager told Mr. Tooson he could leave as he no longer had employment.

Mr. Tooson's statement to the general manager was grounds for immediate discharge. The employee handbook he received indicated that abusive language was grounds for discharge without benefit of prior warnings.

Mr. Tooson filed a claim for job insurance benefits effective August 13, 2006. He has received a total of \$430.00 in benefits since filing his claim.

**REASONING AND CONCLUSIONS OF LAW:**

Mr. Tooson was discharged from employment. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Tooson was discharged because of the abusive language he used in speaking with his manager on August 10. The abusive language was used in the course of an argument and was overheard by at least one other employee. He referred to his general manager as a "motherfucker." He knew or should have known that such conduct was contrary to the employer's standards. Although this was an isolated instance of such conduct, it was so egregious that it constituted disqualifying misconduct within the meaning of the law. Accordingly, benefits are denied.

Mr. Tooson has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

**DECISION:**

The representative's decision dated August 31, 2006, reference 02, is hereby reversed. Mr. Tooson was discharged for disqualifying 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 job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Tooson has been overpaid \$430.00 in job insurance benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs