

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EARL A DUNN
Claimant

APPEAL NO. 10A-UI-15330-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

OC: 10/10/10
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Earl Dunn, filed an appeal from a decision dated November 2, 2010, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 21, 2010. The claimant participated on his own behalf. The employer, Temp Associates, participated by On-Site Manager Becky Snyder. Exhibit One was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Earl Dunn was employed by Temp Associates from June 21, 2010 until September 26, 2010. During that time he was assigned to client company Winegard. On September 26, 2010, Winegard Supervisor Deb Dowell reported to On-Site Temp Associates Supervisor Becky Snyder the claimant had told her to “watch [her] fucking tone” when she was telling him to follow instructions.

Ms. Snyder spoke with Mr. Dunn and he admitted to using the obscenity. He was discharged immediately for violation of the policy prohibiting harassment, which includes inappropriate and offensive language.

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 claimant was discharged for violation of the company rules prohibits insubordination and offensive language. Whatever his disagreement with Ms. Dowell may have been it does not give him permission to use obscenities to a supervisor or any other employee. The employer is obliged to provide good workers to its client companies and the claimant's behavior rendered him unacceptable and jeopardized Temp Associates business relations with its client. 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 November 2, 2010, reference 01, is affirmed. Earl Dunn is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css