

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK JOHNSON
Claimant

APPEAL NO. 13A-UI-05894-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASTERTSON PERSONNEL INC
Employer

OC: 04/14/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Mark Johnson (claimant) appealed an unemployment insurance decision dated May 14, 2013, reference 04, which held that he was not eligible for unemployment insurance benefits because he was discharged from Mastertson Personnel, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 25, 2013. The claimant participated in the hearing with Amber Blicher although she did not offer any testimony. The employer participated through Jim Robertson.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a temporary worker from January 9, 2012 through October 30, 2012 when he was discharged for violating the conduct standards and discipline policy. His assignment with Iowa Mold and Tool was over but he yelled at his direct supervisor and was insubordinate and aggressive towards Iowa Mold and Tool employee Dawn Gamerdinger. The claimant yelled at Ms. Gamerdinger and used profanity towards her. He subsequently called Pat Walker at Mastertson Personnel and was still upset so Mr. Walker told him to calm down. The claimant said, "Why would I calm the fuck down, I was just fired." Mr. Walker again told him to calm down and noted the claimant said it was not going to happen because he is bi-polar and has explosive disorder. The claimant went to the employer's office on November 2, 2012 where he was given a termination notice and asked to sign it but he refused.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has

discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on October 30, 2012 for insubordinate and aggressive behavior. He yelled at his supervisor and used profanity with a client employer and the employer representative. The claimant does not dispute that he was given the termination report to sign and would not sign it but he does dispute that he was terminated from the employer. Regardless of whether he spoke with the employer after the separation date, there is no question that he was discharged. An employer has the right to expect decency and civility from its employees, and an employee's use of profanity or offensive language in a confrontational or disrespectful or name-calling context maybe recognized as misconduct disqualifying the employee from the receipt of unemployment insurance benefits. See *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated May 14, 2013, reference 04, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged

from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css