

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GILBERTO V MARTINEZ**

Claimant

**APPEAL NO. 09A-UI-03821-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERIDIAN MANUFACTURING GROUP INC**

Employer

**OC: 12/21/08**

**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Meridian Manufacturing Group, Inc. (Meridian) filed an appeal from a representative's decision dated March 3, 2009, reference 02, which held that no disqualification would be imposed regarding Gilberto Martinez' separation from employment. After due notice was issued, a hearing was held by telephone on May 5, 2009. Mr. Martinez participated personally. The employer participated by Marla Smith, Human Resources Manager. Patricia Vargas participated as the interpreter.

**ISSUE:**

At issue in this matter is whether Mr. Martinez 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. Martinez was employed by Meridian from November 2, 2007 until January 15, 2009. He was last employed full time as a parts cutter. On January 8, 2009, he was disciplined for leaving his work station without permission. He returned to work on January 14. It was alleged that he twice referred to his supervisor as an "asshole" in Spanish on January 8 after being notified of the suspension. As a result, he was discharged on January 15, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

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. Martinez was discharged based on an allegation that he twice called his supervisor an "asshole" in Spanish. He denied the allegation. The administrative law judge notes that, during the hearing, the interpreter used the word "asshole" rather than a Spanish equivalent. This factor raises the question of whether the individual who reported Mr. Martinez actually heard him use a word that meant "asshole" in Spanish.

The employer did not present testimony from any individual who overheard Mr. Martinez call his supervisor names. Therefore, the administrative law judge does not have the benefit of a translation of what they actually heard. The employer's second-hand hearsay testimony is not sufficient to overcome Mr. Martinez' sworn denial that there was any inappropriate name-calling. Since this was the sole reason for the discharge, it is concluded that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

**DECISION:**

The representative's decision dated March 3, 2009, reference 02, is hereby affirmed. Mr. Martinez was discharged by Meridian but misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs