

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALEXANDER C HILL
Claimant

APAC CUSTOMER SERVICES INC
Employer

APPEAL 15A-UI-08072-KCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/28/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 14, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 7, 2015. Claimant participated. Employer participated through Turkessa Newsome, Human Resources Generalist and Ferdinand Jamais, Senior Operations Manager.

The entire record was reviewed by Administrative Law Judge Teresa K. Hillary, including listening to the entire hearing on September 25, 2015.

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: Claimant was employed full time as a customer service representative beginning on April 6, 2015 through June 28, 2015 when he was discharged. On June 28, Mr. Jamais overheard the claimant using profanity while he was on the call floor. The employer's handbook prohibits that even one instance of using profanity while on the call floor will result in discharge. The claimant had been given a copy of the employer's handbook. Using profanity on the call floor means that offensive language could be heard by a customer on the telephone with any one of the claimant's coworkers. Mr. Jamais could see the claimant and hear what he was saying from his workstation. The claimant stood up abruptly threw his headset onto his desk then as he was walking off the call floor and said "I can't stand these fu**ing people." He was discharged for swearing while on the call floor. The claimant believes he said "I can't fu**ing do this today." In either event the claimant admits that he said the f-word on the call floor in contravention of the employer's specific policy.

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 § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

"The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. EAB*, 462 N.W.2d 734 (Iowa App. 1990).

The claimant is not allowed to use profanity on the call floor even if he has stressful personal issues. The claimant used profanity while on the call floor that could have been overheard by customers on the floor. The employer has established that the claimant was discharged for job-connected misconduct. Benefits are denied.

DECISION:

The July 14, 2015, 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 for
Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

tkh/kac/css