

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY D STINGER
Claimant

APPEAL NO. 12A-UI-06369-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COFFEE KING INC
Employer

OC: 05/06/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated May 23, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on July 17, 2012. The claimant participated. The employer participated by Mr. Chadd Goosmann, company president. Employer's Exhibits 1, 2, and 3 were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jerry Stinger was employed by Coffee King, Inc. from July 8, 2004, until May 7, 2012, when he was discharged from employment. Mr. Stinger worked as a full-time salesperson and was paid by salary plus commissions. His immediate supervisor was Doug Goosmann.

Mr. Stinger was discharged after the company president received two separate complaints regarding Mr. Stinger's demeanor and use of inappropriate language in a work setting. A company receptionist, Marce Treiber, complained to Mr. Goosmann that Mr. Stinger had repeatedly used inappropriate language and made inappropriate statements about Ms. Treiber and the company president. Mr. Treiber alleged that the claimant had referred to her inappropriately (See Exhibit 1).

The company president also, soon thereafter, received a complaint from a company customer in Vermillion, South Dakota, cancelling business, stating that Mr. Stinger had referred to the president of the RED Steakhouse as a "prick" (See Exhibit 2). Because the complaints were similar and had come from two distinct sources, Mr. Goosmann considered the complaints to be credible. The company president also noted that Mr. Stinger had been required to make a Saturday delivery to the Vermillion location because company product had not been previously supplied as required. The company president concluded that Mr. Stinger may have been upset

at having to deliver the product on Saturdays and thus found that allegation of the inappropriate language to be credible as well.

Prior to discharging Mr. Stinger, the company president met with him. Mr. Stinger did not deny making the statements but indicated that he did not "remember" doing so. Based upon the gravity of the complaints and the loss of a client, a decision was made to terminate Mr. Stinger from his employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant to the denial of unemployment insurance benefits. It is.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

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 may be 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). An isolated incidence of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits if it serves to undermine a superior's authority. See Deever v. Hawkeye Window Cleaning, Inc. 447 N.W.2d 418 (Iowa App. 1989).

The evidence in the record establishes that Mr. Stinger had used inappropriate language in dealing with a company employee and made disparaging statements about the employee, causing the female employee to make a direct complaint to the company president. The evidence in the record also establishes the claimant made an inappropriate comment about the president of a company who was a client of Coffee King, Inc., causing the president of that company to complain and to cancel his business contract with the employer. The administrative law judge concludes that the evidence in the record establishes the claimant's conduct was in disregard of the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated May 23, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw