

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FLORENCE R MERFELD
Claimant

APPEAL NO: 14A-UI-09314-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLEXSTEEL INDUSTRIES INC
Employer

OC: 08/17/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Florence “Rose” Merfeld (claimant) appealed a representative’s September 5, 2014 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Flexsteel Industries, Inc. (employer). After hearing notices were mailed to the parties’ last known addresses of record, a telephone hearing was held on September 30, 2014. The claimant participated in the hearing. Donna Backes appeared on the employer’s behalf and presented testimony from one other witness, Dale Uthe. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on December 5, 1991. Her last day of work was August 15, 2014. The employer suspended her that day and discharged her on August 19, 2014. The stated reason for the discharge was disorderly conduct after prior warnings.

There had been a turnover in management with the employer in about the fall of 2013; the new management was not accepting of language and behavior which might have been commonplace under the prior management. On February 21, 2014 the employer had to direct the claimant to settle down and had referred her for counseling due to some outbursts on her part, and on March 4, 2014 she had been formally warned regarding disorderly conduct for using abusive language and yelling in a confrontation. She was advised that her job was in jeopardy if there were further issues.

On August 13 the claimant was instructed to work with some other employees regarding getting a truck unloaded and setting up a machine. She became frustrated with a lack of cooperation from two coworkers and made statements about "this f - - - ing place," and became upset with the truck driver who had not parked where she felt he should have parked, and referred to him behind his back but within hearing of her coworkers as a "f - - - ing moron." While this kind of language might have been commonplace in the past, she knew that it was no longer acceptable. When the employer learned that she had used such abusive language again after the warning on March 4, it determined to discharge her.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's use of abusive language after prior warnings for such conduct, even if not directly to the subject of her frustration, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's September 5, 2014 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 15, 2014. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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