

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**GUY L COOLEY**  
Claimant

**REM IOWA COMMUNITY SERVICES INC**  
Employer

**APPEAL 23A-UI-10847-S2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/15/23  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 14, 2023, (reference 03) unemployment insurance decision that denied benefits based upon a finding that claimant was discharged for conduct not in the best interest of the employer. After due notice was issued, a hearing was scheduled for December 14, 2023. Prior to the hearing date, employer requested a postponement due to witness unavailability. The request was granted. The parties were properly notified of the rescheduled hearing date. An in-person hearing was held on January 2, 2024, in Cedar Rapids, Iowa. Claimant Guy Cooley participated and testified. Employer REM Iowa Community Services, Inc. participated through witnesses program manager Kayla Cranston and program director Emily Naniot and hearing representative Carrie Merrifield.

**ISSUE:**

Was the claimant discharged for disqualifying job-related 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 direct support professional (DSP) from March 15, 2023, until October 13, 2023, when he was discharged.

On September 28, 2023, claimant got into a verbal altercation with a lead direct support professional. Claimant worked at a facility supporting clients with intellectual disabilities, and worked with another DSP and the lead DSP. The lead DSP was not happy claimant was assigned to work at that facility. At one point, claimant told the DSP she was performing one of her tasks incorrectly because she did not do the task as he was trained in a previous job. Later in the shift claimant and the lead DSP began arguing about his assigned tasks. Claimant told the lead DSP he did not want to perform the cooking task he was assigned to do because he did not know how to do it, so the DSP assigned him to give showers to clients. After giving a client a shower, claimant mistakenly placed the client in the wrong wheelchair. When the lead DSP told claimant that was not the client's wheelchair, claimant became upset and began yelling at her. Several clients and another DSP were present at the time and could hear claimant. Claimant told the lead DSP that he didn't "have to take this shit." Claimant then reached into his bag and said, "I've got

something for you.” The lead DSP believed the comment, combined with claimant’s action of reaching for the bag, meant that claimant had a weapon. She told claimant to leave the facility. Claimant would not leave, and the employee became more upset and yelled at him to leave or she would call the police. Claimant continued to refuse to leave, but after approximately ten minutes, he left the facility. Claimant believes the lead was too sensitive and overreacted.

The lead DSP immediately reported claimant’s conduct to employer. Employer investigated the incident by interviewing claimant, the lead DSP, and the third DPS present. Employer discharged claimant for violating its workplace violence policy and its code of conduct which prohibits disruptive and disrespectful behavior. Claimant was aware of these policies.

## **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 section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual’s wage credits:

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 disqualification shall continue 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 Code section 96.5(2)b, c and d provide:

An individual shall be disqualified for benefits, regardless of the source of the individual’s wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual’s employment:

b. Provided further, if gross misconduct is established, the department shall cancel the individual’s wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant’s employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

d. For the purposes of this subsection, “*misconduct*” means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee’s contract of employment. Misconduct is 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 even 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. Misconduct by an individual includes but is not limited to all of the following:

- (1) Material falsification of the individual's employment application.
- (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
- (3) Intentional damage of an employer's property.
- (4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer's premises in violation of the employer's employment policies.
- (5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.
- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
- (7) Incarceration for an act for which one could reasonably expect to be incarcerated that result in missing work.
- (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.
- (11) Failure to maintain any licenses, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.
- (12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.
- (13) Theft of an employer or coworker's funds or property.
- (14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. An employer has a "right to expect decency and civility from its employees." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 738 (Iowa Ct. App. 1990). Profanity or other offensive language in a confrontational, name-calling, or disrespectful context may constitute misconduct, even in isolated situations or in situations in which the target of the statements is not present to hear them. See *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990), overruling *Budding v. Iowa Dep't of Job Serv.*, 337 N.W.2d 219 (Iowa Ct. App. 1983). "We have recognized that vulgar language in front of customers can constitute misconduct, *Zeches v. Iowa Dep't of Job Serv.*, 333 N.W.2d 735, 736 (Iowa Ct. App. 1983), as well as vulgarities accompanied with a refusal to obey supervisors. *Warrell v. Iowa Dep't of Job Serv.*, 356 N.W.2d 587, 589 (Iowa Ct. App. 1984).

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, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). "An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority." *Deever v. Hawkeye Window Cleaning, Inc.* 447 N.W.2d 418, 421 (Iowa Ct. App. 1989). The "question of whether the use of improper language in the workplace is misconduct is nearly always a fact question. It must be considered with other relevant factors...." *Myers v. Employment Appeal Board*, 462 N.W.2d 734, 738 (Iowa App. 1990).

Aggravating factors for cases of bad language include: (1) cursing in front of customers, vendors, or other third parties (2) undermining a supervisor's authority (3) threats of violence (4) threats of future misbehavior or insubordination (5) repeated incidents of vulgarity, and (6) discriminatory content. *Myers v. Employment Appeal Board*, 462 N.W.2d 734, 738 (Iowa App. 1990); *Deever v. Hawkeye Window Cleaning, Inc.* 447 N.W.2d 418, 421 (Iowa Ct. App. 1989); *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995); *Carpenter v. IDJS*, 401 N.W. 2d 242, 246 (Iowa App. 1986); *Zeches v. Iowa Department of Job Service*, 333 N.W.2d 735 (Iowa App. 1983). The consideration of these factors can take into account the general work environment, and other factors as well.

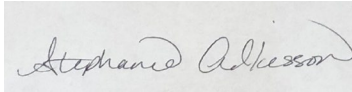
Here, claimant yelled and used profanity in front of the clients served by employer. The lead DSP was claimant's superior on the September 28, 2023, shift and he swore at her. Claimant's behavior in telling the lead DSP that she was performing her job incorrectly undermines her authority. It was reasonable for the employees to believe claimant had a weapon based on his action in grabbing for his bag while making a comment that he had something for the employee.

Claimant's conduct demonstrated a willful disregard of the standards of behavior employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Further, employer is entitled to establish reasonable work rules and expect employees to abide by them. Employer has presented substantial and credible evidence that claimant yelled and swore at

management and made comments and gestures to instill fear in others. This is disqualifying misconduct, even without prior warning. Benefits are denied.

**DECISION:**

The November 14, 2023, (reference 03) unemployment insurance decision is affirmed. 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.

A handwritten signature in cursive script that reads "Stephanie Adkisson". The signature is written in black ink on a light-colored background.

---

Stephanie Adkisson  
Administrative Law Judge

January 4, 2024  
Decision Dated and Mailed

scn

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.