

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES M SMITH
Claimant

APPEAL NO. 06A-UI-10353-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

YOUTH HOMES OF MID-AMERICA
Employer

OC: 09-24-06 R: 02
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 19, 2006, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on November 7, 2006. The claimant did participate along. The employer did participate through (representative) Mike Pavon, Director of Residential Services, and Dan McGhee, Shift Supervisor.

ISSUE:

Was the claimant discharged for work related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a youth care worker full time beginning May 15, 2006 through September 21, 2006, when he was discharged.

On September 16 the claimant and one of the residents were involved in a verbal confrontation where the claimant told a resident to “fuck off.” The claimant admitted that he did make the comment to the resident and apologized at the time for making the comment. The employer’s handbook prohibits use of such language when speaking to the youth residents who live in the facility.

The claimant had been previously spoken to on July 21, 2006, when he was involved with a confrontation with clients wherein he allegedly called a resident a “little bitch.” The claimant denied calling the resident a little bitch but did call the resident a little monkey or a chunga.

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:

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 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 was working with young people and knew or should have known that using profanity when speaking to a youth resident was unacceptable behavior. In this situation, the claimant knew what the policy was and was not entitled to repeated warnings before the employer made the decision to discharge him. Apologizing for the comment does not make it acceptable behavior. The claimant's use of profanity when speaking to the resident is sufficient misconduct to disqualify him from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The October 19, 2006, reference 02 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

Decision Dated and Mailed

tkh/kjw