

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**STEVEN D MAYHUGH**  
Claimant

**APPEAL 21A-UI-09487-ML-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANKO WINDOW SYSTEMS INC**  
Employer

**OC: 01/24/21  
Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the March 23, 2021 (reference 03) unemployment insurance decision that disallowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on June 9, 2021. The claimant, Steven Mayhugh, participated personally. Claimant's fiancé, Dena Gerhart, also provided testimony on claimant's behalf. The employer, Manko Window Systems, Inc., participated through witness Kass Johnson.

Claimant's Exhibits 1-3 were offered and admitted into the evidentiary record.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a Metal Fabricator. Claimant was employed from March 23, 2020, until January 29, 2021, when he was discharged from employment. Mariah Ramirez was claimant's immediate supervisor.

The employer has a written, progressive disciplinary policy; however, the employer has the ability to override the progressive policy if an employee's conduct warrants the same. Employees may be disciplined or terminated for misconduct including, but not limited to, insubordination; using vulgar, profane, or obscene language; and/or disregarding safety regulations. The policy is contained in the employee handbook, which claimant acknowledged receiving.

The final incident which led to claimant's discharge occurred on January 19, 2021. On the date in question, claimant and his co-worker were not wearing his safety glasses at work. Claimant became irate when his foreman, Mike Osborn, approached and told him to put on his safety

glasses for the second time. Claimant raised his voice, yelled, used profanity, and was generally disrespectful to Mr. Osborn. Ms. Ramirez asked claimant to calm down and he began yelling and screaming at her as well. Witness Kanda Szalay recalled claimant saying, "Mike needs to worry about safety on his own fucking side." Claimant also took issue with the fact the employer was seemingly concerned with some personal protective equipment (PPE), but not others. Claimant does not dispute that he became irate on January 19, 2021; however, he does dispute the assertion that he used profanity. Given the credible accounts of Ms. Johnson and Ms. Szalay, I find claimant's testimony that he does not use profanity to lack credibility.

Claimant had previously received verbal and written warnings for behavioral issues, attendance issues, and his productivity.

On September 4, 2020, claimant left work early without permission. The employer believes claimant left work early because he did not want to help put away metal parts.

Claimant received a written warning for attendance issues on September 10, 2020.

On September 14, 2020, claimant's entire department received a verbal warning regarding the need for all employees to help put away metal parts.

Claimant received a second written warning for attendance issues on September 21, 2020. Claimant was absent from work for a full day on September 15, 2020, and a partial day on September 16, 2020. Claimant was visibly upset and frustrated by the written warning. Claimant was told numerous times that his absences would be excused if he brought in a doctor's note or medical excuse. In response, claimant threw his hospital bracelet at Ms. Johnson and said, "here that's for you." Claimant never provided the employer with a doctor's note or medical excuse for September 15, 2020, or September 16, 2020.

On October 2, 2020, claimant was sent home from work after he became visibly upset about inaccuracies in his paperwork and allegations that his work was not being completed in a timely manner. Claimant was throwing his paperwork, yelling at co-workers, and making a scene. Ms. Johnson told claimant that the employer would not tolerate such inappropriate behavior, and that if said behavior continued they would have to discuss his future with the company. Claimant disputes that the employer told him he could be terminated if his behavior continued.

Claimant believes he was terminated because he brought a number of safety concerns to the employer's attention. There is no evidence claimant was terminated for reporting safety concerns to the employer. Rather, the evidentiary record suggests claimant was terminated for his actions leading up to, and on, January 19, 2021.

#### **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. Benefits are denied.

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).

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience. In general, the undersigned found Ms. Johnson's testimony to be more believable and credible than the testimony provided by claimant.

The evidence in this case is clear. The employer had addressed claimant's behavioral issues with him on a number of occasions prior to the January 19, 2021, incident. In fact, claimant had recently received a written warning regarding his behavioral issues on October 2, 2020. Claimant was told that if his behavioral issues continued, the employer would have to re-evaluate his employment with the company. Claimant was subsequently unable to control his anger on January 19, 2021.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the 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. The employer has met its

burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The March 23, 2021 (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.



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Michael J. Lunn  
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July 8, 2021  
Decision Dated and Mailed

mjl/lj