

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN P RICKE

Claimant

VAN DIEST SUPPLY CO

Employer

APPEAL NO: 10A-UI-02215-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/17/10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 10, 2010, reference 01, that held he was discharged for misconduct on January 22, 2010, and benefits are denied. A telephone hearing was held on May 12, 2010. The claimant, and his Attorney, Jeff Krausman, participated. Carolyn Cross, Personnel Manager, Clark Vold, Manufacturing Director, and Hank Hackbarth, Manager, participated for the employer. Employer Exhibits 1-6 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on February 13, 2001, and last worked for the employer as a full-time team leader on January 22, 2010. The claimant received an employee handbook that contained the policies of the employer. The claimant knew that he was not to use profane or abusive language at the workplace. The claimant knew he was not to use abusive or threatening language toward a supervisor or member of management.

Manager Hackbarth was claimant's immediate supervisor. On January 20, 2010, the claimant confronted Hackbarth in Building #17 by throwing his hard hat and stating he had enough of this fucking place. He also stated he was tired of being fucking short on help every night, and tired of getting fucked over on his pay level increases. The claimant was tired of all the bullshit, and he no longer wanted to be a Team Leader (White Hat).

Hackbarth submitted a written statement of the incident to Manufacturing Director Vold. Vold, and Operations Director Spencer met with the claimant on January 21 about the incident. Claimant admitted using profane language to Hackbarth, but denied throwing his hard hat across the plant floor (rather throwing it on the table). Claimant explained he was upset about

the employer pressing him for increased production, and that his employer was expecting too much of him.

After reviewing the incident and claimant's conduct on January 20, the employer discharged the claimant on January 22, 2010 for abusive, profane and threatening language toward his supervisor. The claimant believes the employer has failed to consistently apply this policy based on employees using profanity and abusive language at the workplace, and not being discharged though there is a difference when using it to a supervisor.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on January 22, 2010, for violation of company policy. The claimant had not been disciplined for a similar offense.

The claimant knew the employer policy regarding the use of profane, abusive or threatening language to a supervisor. The claimant admitted using repeated, profane language to his supervisor when he confronted him about his treatment by management as a team leader, and throwing his hard hat to emphasize this point. The claimant acknowledged the difference between employees using profanity on a casual basis versus using it to a supervisor.

While the claimant violated the employer policy, it is an isolated instance where this occurred outside the presence of any other employee, and the claimant did not threaten his supervisor. The claimant made his statements with an offer to step-down from his team leader position in a moment of frustration that does not constitute job disqualifying misconduct. Budding v. IDJS, 337 NW2d 219 (Iowa App. 1983); Myers v. EAB, 462 NW2d 734 (Iowa App. 1990).

DECISION:

The department decision dated February 10, 2010, reference 01, is reversed. The claimant was not discharged for misconduct on January 22, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs