

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS CONRAD
Claimant

APPEAL NO: 12A-UI-07901-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

AUTOZONERS LLC
Employer

OC: 06-03-12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 25, 2012, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 24, 2012, and continued on July 26, 2012. The claimant participated in the hearing. Karen Brown, Regional Human Resources Manager and Justin Cole, District Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Seven were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time salesman for Autozoners from May 22, 1998 to June 7, 2012. On April 7, 2012, the claimant was having a conversation with a co-worker regarding hunting and mentioned a "fucking gook" in Minneapolis was shooting small birds and eating them. There was an Asian and an Hispanic employee present, who were both greatly offended by the claimant's comments. Benjamin Choi reported the situation to the store manager who reported the incident to District Manager Justin Cole. Mr. Cole notified Regional Human Resources Manager Karen Brown approximately May 3, 2012. Ms. Brown, who is based in Kansas City, traveled to Iowa to interview the claimant and the witnesses May 17, 2012. The claimant admitted using the word "gooks" but denied saying, "fucking gooks." He stated he is a Vietnam Veteran and was not aware the term was highly offensive. The other three witnesses all said the claimant said, "fucking gooks." Ms. Brown submitted the investigatory statements to the regional manager who made the determination to terminate the claimant's employment. The claimant was on vacation and was notified of the termination decision upon his return June 7, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant used a highly derogatory term for Asian people accompanied by profane language in referring to a

Vietnamese man in Minneapolis who shot small birds and ate them, the incident occurred two months before the termination, even though the employer was aware of the incident by at least mid-April 2012. The claimant's actions were misconduct. However, the employer did not act in a timely manner to address the situation and terminate the claimant's employment. Because the claimant's words were not a current act of misconduct, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The June 25, 2012, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs