

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICARDO ESPINOZA
Claimant

APPEAL NO: 12A-UI-05004-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURLINGTON STAGE LINES LTD
Employer

OC: 04/01/12
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 April 19, 2012, reference 01, that held he was discharged for misconduct on March 15, 2012, and which denied benefits. A telephone hearing was held on May 22, 2012. The claimant participated. Marty Bradley, vice president, participated for the employer. Claimant Exhibit A 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 November 14, 2008, and last worked for the employer as a part-time ticket agent on March 15, 2012. The employer discharged claimant on March 24 for an incident that occurred on March 15.

A person called for information and claimant responded it was service provided by another Trailways company, and he provided the number for it. The same person re-called requesting the number, and claimant disconnected. The person called a third time, and claimant requested that the number be recorded using pen and paper. Claimant provided the number and she responded, "Fuck you," he said, "Bitch," and the call ended. The employer received a complaint and listened to the conversation on March 19. The employer discharged claimant on March 24, 2012 for rude conduct to a customer.

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 claimant was discharged for misconduct in connection with employment on March 24, 2012, for a serious violation of company policy.

The employer did not offer any written disciplinary policy as evidence in this matter to establish that a single incident of rude conduct to a customer is grounds for immediate termination. There is no evidence claimant received a previous written warning for the same issue and put on notice a further incident would mean termination.

Claimant made a knee-jerk type of response calling the lady a "bitch" right after she said "fuck you" to him. The claimant had made an appropriate response to the lady in the first call, and it is understandable he became aggravated with a call back. He complied with a proper response in the third call to comply with the request, and he was most probably caught off guard with the profane response. While the employer had the right to discharge claimant, job-disqualifying misconduct is not established.

DECISION:

The department decision dated April 19, 2012, reference 01, is reversed. The claimant was not discharged for misconduct on March 24, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw