

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YANET ORTIZ CORONA
Claimant

APPEAL NO: 11A-UI-03966-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC
Employer

OC: 01/23/11

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Packers Sanitation Services, Inc. (employer) appealed a representative's March 21, 2011 decision (reference 01) that concluded Yanet Ortiz Corona (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 20, 2011. The claimant participated in the hearing. Chris Heaton appeared on the employer's behalf. Ike Rocha served as interpreter. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 17, 2010. She worked full time as a sanitation worker in the employer's contract cleaning account at the employer's Marshalltown, Iowa packing house client. She worked on the third shift five or six days per week. Her last day of work was January 21, 2011. The employer discharged her on that date. The reason asserted for the discharge was that she had been verbally abusive and had made unfavorable comments to her supervisor about Mr. Heaton, the account manager.

During the early morning hours of January 21 the claimant was working in an area in the same vicinity as Mr. Heaton and her own regular supervisor. Mr. Heaton asked the claimant several times to hand him a scratch pad that was near her. She declined, as the scratch pad was not hers to give. There was some question as to whether there was clear communication between Mr. Heaton, who speaks limited Spanish, and the claimant, who primarily speaks Spanish. Mr. Heaton then sought to have the supervisor interpret his request to the claimant.

In speaking with her supervisor the claimant made a reference to a "stupid white man." The claimant was then sent to another area to work for about an hour and a half before being summoned to the office. When she was brought to the office she was told she was discharged.

She then referred to Mr. Heaton as being “racist.” Because the employer felt that she had been verbally abusive and used foul language in reference to Mr. Heaton, the employer discharged the claimant. There was no prior history of disciplinary action against the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant’s employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is in essence her reference to a “stupid white man.” 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. Myers v. Employment Appeal Board, 462 N.W.2d 734, 738 (Iowa App. 1990). A reference to a “stupid white man,” while rude and disrespectful, does not arise to the same level of language as the type of profanity or offensive language for which a single offense can constitute misconduct, such as truly vulgar terminology, for example, calling a manager a “stupid mother f - - -er.” Zeches v. IDJS, 333 N.W.2d 735 (Iowa App. 1983). Under the circumstances of this case, the claimant’s single inappropriate reference was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. While the employer may have had a good business reason for discharging the claimant, it has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's March 21, 2011 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs