

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRENT E ANDERSON**  
Claimant

**EGS CUSTOMER CARE INC**  
Employer

**APPEAL 15A-UI-13137-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/01/15  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Brent Anderson (claimant) filed an appeal from the November 18, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination EGS Customer Care, Inc. (employer) discharged him for engaging in conduct that was not in its best interest. The parties were properly notified about the hearing. A telephone hearing was held on December 16, 2015. The claimant and Resolution Specialist Becky Nimrick participated on his behalf. The employer had a witness registered; however, at 1:28 p.m. the witness sent an email withdrawing from the hearing due to other obligations and did not participate.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a Resolution Specialist beginning on November 05, 2012, and was separated from employment on October 29, 2015, when he was discharged.

On the morning of Friday, October 16, 2015, the claimant arrived at work and his co-worker Brian Kilgore was sitting in the spot which the claimant had sat in for his entire employment. The employer does not have assigned seats, but the claimant had left some personal items on the desk where he normally sat. He asked Kilgore to move and Kilgore declined. The claimant picked up his personal items and moved to another seat. The only witness to the incident was Resolution Specialist Becky Nimrick.

The following Wednesday, Human Resources Manager Turkessa Newsome interviewed the claimant about the incident with Kilgor. She asked him if he swore or used profanity during the incident. The claimant denied doing so. Newsome also interviewed several other employees including Nimrick. Nimrick denied the claimant swore or used profanity during the incident.

On October 29, 2015, Newsome told the claimant that after her investigation she concluded the claimant had used profanity during the incident with Kilgore in violation of the employer's policy.

She discharged the claimant at that time. The claimant had not received any prior warnings for similar conduct.

### **REASONING AND CONCLUSIONS OF LAW:**

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

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).

Iowa Admin. Code r. 871-24.32(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.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial."

The employer has not established that the claimant engaged in any misconduct. The claimant credibly denied the employer's allegation he used profanity in the workplace and the only witness to the incident corroborated the claimant's testimony. The employer did not provide any testimony or evidence to refute the claimant's denial. The employer has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Accordingly, benefits are allowed.

**DECISION:**

The November 18, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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