

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY M CLARK
Claimant

APPEAL NO. 06A-UI-09752-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BERKLEY INC
Employer

**OC: 09/10/06 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jeffrey Clark (claimant) appealed a representative's September 28, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Berkley (employer) for insubordination in connection with his work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 18, 2006. The claimant participated personally. The employer participated by Shelly Krause, Human Resources Director; Carla Jones, Human Resources Office Manager; and Jeff Rehder, Director of Manufacturing.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on January 17, 2000, as a full-time bait packager. The claimant signed for receipt of the company handbook on February 19, 2000. On March 3, 2000, the claimant received training on making the environment free of harassment. On September 1, 2000, the employer issued the claimant a written warning for making inappropriate comments to a female employee. This was a first and final warning due to the severity of the claimant's actions. On January 27, 2005, the claimant was issued a written warning for having a confrontation with a co-worker.

On July 28, 2006, a co-worker reported to the employer that the claimant made inappropriate comments of a sexual nature to her. The employer asked the claimant to wait for a meeting. The claimant was angry and tired of waiting. He talked about "fucking skirts" and he was not going to wait around for "a fucking meeting". Then he walked off the job. Later he called a co-worker and asked to have his computer shut off. He again complained about "fucking skirts". He telephoned the employer and took vacation through August 13, 2006.

On August 14, 2006, the claimant was to attend a meeting with the employer. Instead, he called the employer and said he could not attend. The employer terminated the claimant for unprofessional and disrespectful conduct in the workplace after having been warned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons, that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Foul language of itself can constitute disqualifying job misconduct. Warrell v. Iowa Department of Job Service, 356 N.W.2d 587 (Iowa App. 1984). The claimant used inappropriate language on two occasions. After the first occasion, he was warned. The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's September 28, 2006 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw