

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETH A CARLSON
Claimant

APPEAL NO. 12A-UI-15035-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUSTOM-PAK INC – LP2
Employer

OC: 11/25/12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 18, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 7, 2013. The claimant did participate. The employer did participate through Andrea Lawrence, Human Resource Manager; Chuck Corbisier, C & C programmer; Byron Bates, Fixture Technician and Jerry Weber, Manufacturing Manager.

ISSUE:

Was the claimant discharged due to job-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 janitor full time beginning December 30, 1978 through November 26, 2012 when she was discharged. On December 5, 2011 the claimant was given a suspension and final warning after her coworkers complained when she referred to other employees as “c*nts.” The claimant was specifically warned after that incident that if she had any further issues with inappropriate language or behavior toward coworkers she would be discharged.

On November 26, 2012 the claimant spoke inappropriately to Mr. Bates. The week prior Mr. Bates saw the claimant cleaning the sink in the men’s bathroom with what he thought was the same brush she used to clean the toilets. Mr. Bates said nothing to the claimant about the incident. Mr. Bates contacted his supervisor Dave who spoke to the claimant’s supervisor, Jerry. Jerry spoke to the claimant and asked her if she had been using the same brush to clean the sink as she used to clean the toilet. The claimant indicated she had not and as far as the claimant’s supervisor was concerned that was the end of the matter. The claimant was not disciplined for the incident at all.

The following week the claimant went to Mr. Bates and began to verbally accuse him of harassing her and complaining about her to her supervisor. Present for the altercation was the claimant, Mr. Bates and Chuck Corbisier. The claimant began yelling so loudly at Mr. Bates that

other employees walked out of their offices to see what the commotion was about. The claimant yelled at Mr. Bates and called him an “asshole.” Her conduct was witnessed by several other employees. At hearing the claimant admitted that she did call Mr. Bates an “asshole.”

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). “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 or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made.” This is ordinarily a fact question for the agency. *Budding v. Iowa Department of Job Service*, 337 N.W.2d 219 (Iowa App. 1983) is overruled “to the extent [it] contradicts this position. *Myers v. Employment Appeal Board*, 462 N.W.2d 734 (Iowa App. 1990).

The claimant had no business confronting Mr. Bates. She had not been disciplined for the alleged violation and her supervisor considered the matter closed. The claimant had been

specifically previously warned that any further use of inappropriate language would lead to her discharge. The claimants repeated use of inappropriate language toward her coworkers is sufficient misconduct to disqualify her from receipt of unemployment insurance benefits.

DECISION:

The December 18, 2012 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/tll