

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONOVAN L VALENTINE
Claimant

ENTERPRISE RENT-A-CAR CO
Employer

APPEAL 16A-UI-06529-LJ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/15/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 6, 2016, (reference 01) unemployment insurance decision that denied claimant benefits based upon a determination that claimant was discharged from employment for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held at 3:00 p.m. on June 28, 2016. The claimant, Donovan L. Valentine, participated. The employer, Enterprise Rent-a-Car Company, participated through Joshua Maubach, area rental manager. Employer's Exhibits 1 through 4 were received and admitted into the record without objection.

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: Claimant was employed part time as a service agent from April 20, 2012, until this employment ended on May 12, 2016, when he was discharged for using profanity toward a coworker.

Claimant sent text messages to his coworker/friend expressing his frustration that the coworker had done little work that day. Claimant used profanity multiple times in these messages. (Exhibit 1) Claimant's coworker was with James Conley, a manager, at the time he received the messages, and he shared the messages with Conley. Conley instructed the coworker not to respond. Conley then reached out to Maubach, who instructed him to send claimant home. When claimant came in for his next scheduled shift, Maubach discharged him. Claimant contends he was speaking to this person as a friend and not a coworker. Additionally, while he was in the employer's building during the text conversation, he was not clocked in and getting paid.

Claimant had been warned about using profanity and inappropriate language at work on four prior occasions. Most recently, claimant was given a final written warning on March 1, 2016, for using profanity during an argument with Conley. (Exhibit 2) Maubach testified that Conley was given a written warning for his role in this argument. Claimant was also warned for using inappropriate language on December 14, 2015; September 9, 2014; and April 2, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying job-related misconduct. Benefits are withheld.

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).

"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." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). "[A]n employer has the right to expect decency and civility from its employees." *Henecke v. Iowa Div. of Job Serv.*, 533 N.W.2d 573, 576 (Iowa Ct. App. 1995).

Claimant used profanity multiple times during a work-related text message conversation with a coworker. Claimant had been warned multiple times in the past for his use of profanity at work, and he was aware his job was in jeopardy. Claimant's use of profanity during the text message conversation is considered disqualifying misconduct. Benefits are denied.

In the alternative, claimant argues that this text message conversation was off-duty conduct, as he was not clocked in at the time. Under the definition of misconduct for purposes of unemployment benefit disqualification, the conduct in question must be "work-connected." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991). The court has concluded that some off-duty conduct can have the requisite element of work connection. *Kleidosty v. Emp't Appeal Bd.*, 482 N.W.2d 416, 418 (Iowa 1992). Under similar definitions of misconduct, for an employer to show that the employee's off-duty activities rise to the level of misconduct in connection with the employment, the employer must show by a preponderance of the evidence that the employee's conduct (1) had some nexus with the work; (2) resulted in some harm to the employer's interest, and (3) was conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer's interest would suffer. See also, *Dray v. Director*, 930 S.W.2d 390 (Ark. Ct. App. 1996); *In re Kotrba*, 418 N.W.2d 313 (SD 1988), quoting *Nelson v. Dept of Emp't Security*, 655 P.2d 242 (WA 1982); 76 Am. Jur. 2d, Unemployment Compensation §§ 77–78.

In this case, claimant was speaking with his coworker regarding work while at the worksite. Though claimant was not clocked in at the time, his conduct undoubtedly has a nexus to his work. Claimant's use of profanity toward the coworker harmed the work relationship with the coworker as well as overall morale. Claimant's conduct violated every employer's reasonable expectation that employees act decently and civilly toward one another. Finally, claimant seemed aware that this conversation would destroy his working relationship with the coworker, thereby harming the employer. Even if claimant's text message conversation qualifies as off-duty conduct, it rises to the level of disqualifying misconduct and benefits are withheld.

DECISION:

The June 6, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/pjs