

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT E SMITH
Claimant

APPEAL NO. 09A-UI-04866-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYER'S SERVICE BUREAU INC
Employer

OC: 03/01/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 19, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 23, 2009. Employer participated by Joe Rausenberger. Claimant failed to respond to the hearing notice and did not participate. Exhibit One, pages 1— 4, was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was fired for uttering a string of profanities at a coworker and supervisor on February 25, 2009. The claimant was being dropped off at work and was instructed to let the driver of the car know he should not make a three point turn in the road but to go on through and turn around. The claimant was upset at this and started swearing at both Estavo Marquez and Joe Rausenberg. He called Mr. Marquez “f***ing rude” and continued to swear.

REASONING AND CONCLUSIONS OF LAW:

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.

Swearing on the job is not always misconduct. It is conduct an employer does not have to tolerate. Every instance of this type of conduct needs to be analyzed in context of the work place, prior warning and the exact conduct. The claimant did not utter an isolated swear word, but a string of profanity directed at two employees. This constitutes a substantial disregard of the employer's interest. While he had not been warned previously, his conduct did violate the employer's policy on behavior.

In this matter, the evidence established that claimant was discharged for an act of misconduct.

DECISION:

The decision of the representative dated March 19, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/pjs