

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BENJAMIN L PUCCIO**  
Claimant

**BLAZIN WINGS INC**  
Employer

**APPEAL 15A-UI-05584-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/19/15  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 5, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 18, 2015. Claimant participated. Employer participated through Charles Van Luyn, Front House Manager and was represented by Jeffrey Scher of ADP UCM. Employer's Exhibit One was entered and received into the record.

**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: Claimant was employed full-time as a guest experience captain beginning on June 29, 2004 through April 18, 2015 when he was discharged.

The claimant was angry because an AV tower in the restaurant had not been working correctly for months. The employer has specific protocols they make the store go through in order to get equipment fixed. The claimant was busy on April 17 training two new employees and had spent 45 minutes trying to get one of the television channels to change. The claimant approached Mr. Van Luyn on the floor of the restaurant and began to complain using language that customers and coworkers could hear. Mr. Van Luyn had him come to the back so their conversation could be private. The claimant began a profanity laced tirade which included telling Mr. Van Luyn that he was going to make life miserable for every employee until he was discharged.

**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 § 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).

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." *Myers v. EAB*, 462 N.W.2d 734 (Iowa App. 1990).

The administrative law judge is persuaded that on April 17 the claimant did use profanity in an abusive conversation with Mr. Van Luyn. The claimant would not have been expected to endure such language of statements from his manager. The claimant had lost his temper on two prior occasions and been verbally counseled. Being angry is not a good excuse or justification for a profanity laced abusive conversation with a manager. The claimant did threaten to make other employees miserable until he was discharged. His conduct is not in the employer's best interest and is substantial job connected misconduct. Benefits are denied.

**DECISION:**

The May 5, 2015 (reference 01) 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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