

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL J LAMUNYON
Claimant

APPEAL NO. 12A-UI-12278-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOYS CLUB OF DES MOINES
Employer

OC: 09/16/12
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Boys Club of Des Moines filed a timely appeal from a representative's decision dated October 3, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a hearing was scheduled for and held on December 5, 2012. Claimant participated. The employer participated by Ms. Marylou Warner, Chief Operating Officer; Ms. Jodi Warth, Chief Professional Officer; and Ms. Erika Peterson, Unit Director.

ISSUE:

The issue in this matter is whether the evidence in the record established misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Paul Lamunyon was employed by Boys Club of Des Moines from August 14, 2007 until September 17, 2012 when he was discharged from employment. Mr. Lamunyon was most recently employed as a full-time program director and was paid by salary. His immediate supervisor was Erika Peterson.

Mr. Lamunyon was discharged on September 17, 2012 because of an incident that had taken place on September 13, 2012 at the Boys Club of Des Moines facility.

On that day Mr. Lamunyon had disagreed with a staffing decision that had been made by an Americor volunteer and approved by the unit director, Ericka Peterson. When the Americor volunteer was unwilling to change the scheduling in a manner Mr. Lamunyon felt appropriate the claimant became angry arguing the matter with the Americor volunteer repeatedly using inappropriate language and making disparaging statements about his employment with the organization. Both Mr. Lamunyon and the volunteer had allowed the dispute to escalate to a loud shouting match and both individuals were using inappropriate language in a loud and inappropriate manner that could be overheard by staff in other areas.

The claimant's supervisor, Ms. Peterson, could overhear the yelling and inappropriate language used by Mr. Lamunyon and the volunteer. She heard Mr. Lamunyon's disparaging statements about his employment as well. Ms. Peterson intervened and stopped the conduct of the parties.

A decision was made to terminate Mr. Lamunyon because the employer felt that his statements were disparaging and the claimant's language and demeanor were patently inappropriate. Mr. Lamunyon had previously been warned or coached on other issues.

Although Mr. Lamunyon concedes that his language and display of anger was inappropriate, it is the claimant's contention that his discharge was solely related to the desire on the part of the organization's director to find a reason to discharge him from employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). An employer has the right

to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful or name-calling context may be recognized as misconduct disqualifying the employee from the receipt of unemployment insurance benefits. See Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). The use of foul language alone can be a sufficient ground for a misconduct disqualification for unemployment benefits. Warrell v. IDJS, 356 N.W.2d 587 (Iowa App 1984). An isolated instance of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine management decisions. Deever v. Hawkeye Window Cleaning Inc., 447 N.W.2d 418 (Iowa App. 1989).

The evidence in the record establishes that Mr. Lamunyon was discharged after yelling inappropriate and disparaging comments about his employment and using patently inappropriate, offensive language in a confrontational situation with another worker, using a manner that was disruptive and could be overheard by staff members in adjacent areas.

For the reasons state herein the administrative law judge concludes that the employer has sustained its burden of proof in establishing that Mr. Lamunyon's separation from employment took place under disqualifying conditions. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated October 3, 2012, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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