

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LARRY D SANDBULTE**  
Claimant

**APPEAL NO. 12A-UI-05684-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VERMEER MANUFACTURING  
COMPANY INC**  
Employer

**OC: 04/15/12  
Claimant: Appellant (1)**

Section 96.5-2-A – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated May 7, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 7, 2012. Claimant participated. The employer participated by Becky Fowler, the human resources business partner, and Leo Wadle, the quality manager for the trenchless and rubber tire division. The record consists of the testimony of Becky Fowler; the testimony of Leo Wadle; the testimony of Larry Sandbulte; and Employer's Exhibits 1-6.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures a variety of products, including underground drilling equipment and agricultural equipment, at its seven facilities located in Pella, Iowa. The claimant worked in plant seven, which is the underground division. His date of hire was October 10, 1988. His last day of work was March 26, 2012. He was terminated on March 27, 2012. At that time his job was quality technician. He was a full-time employee.

On March 26, 2012, the employer found out that the claimant made a statement that was heard by five or six other employees that he "felt I got a dick shoved up my ass when I got this line put on me." The claimant was standing at a computer and was having some difficulty locating the necessary parts. The other employees were standing around or behind him when the comment was made. While this comment was being investigated, another incident was discovered. On March 24, 2012, the claimant called a female employee "stupid" after she made a mistake. Whether he called her "fucking stupid" and further said, "You better get it right or I'm going to call you every name in the book including a black girl" was disputed by the claimant. The female employee did not testify at the hearing.

The employer has a written policy called “Respectful Workplace”, which prohibits action that constitutes harassment or discrimination. (Exhibit 11 and Exhibit 12) Termination can result from the violation of this provision. The claimant was aware of these policies.

### **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.

Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Profanity or other offensive language in a confrontational or disrespectful context may constitute misconduct, even in isolated situations or in situations in which the target of the statements is not present to hear them. See Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990). In Henecke v. IDJS, 533 N.W.2d 573 (Iowa App. 1995), the Iowa Court of Appeals stated that an employer has the right to expect decency and civility from its workers. The employer has the burden of proof to show misconduct.

In this case the evidence established that the claimant was terminated after he made what the employer considered to be vulgar statements in the workplace. The first statement that came to the employer's attention was the claimant's statement that “he felt like I got a dick shoved up my ass when I got this line put on me.” The claimant does not deny making this statement although he is not sure of the exact words. He testified he was saying it “to himself” but several employees heard it. The claimant admitted that he was in the floor, before a computer, and five

or six people were around and could have heard it. There is no question that this is vulgar language. It can be reasonably interpreted as directed toward management in a disrespectful context.

The second statement is equally troubling. The claimant either called a fellow female employee "stupid" or "fucking stupid." The claimant denied using the work "fucking." Regardless, calling another employee stupid is disrespectful and inconsistent with the employer's "Respectful Workplace" rules.

The administrative law judge concludes that there is a pattern on the part of the claimant of using language that is inappropriate and prohibited in the workplace. He violated his duty of geniality and civility as well as specific work rules. This is misconduct. Accordingly, benefits are denied.

**DECISION:**

The decision of the representative dated May 7, 2012, 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.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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