

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY D FORE
Claimant

APPEAL NO: 06A-UI-09404-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DM SERVICES INC
Employer

**OC: 08/20/06 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Jeffrey D. Fore (claimant) appealed a representative's September 15, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of DM Services, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 9, 2006. The claimant participated in the hearing. Sheree Banks, the human resource administrator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 13, 2004. He worked 30 to 32 hours a week as a credit analyst and collector. Marty Heldt was the claimant's supervisor.

On November 1, 2005, the claimant became upset with a female co-worker and used profanity while they were at their work stations. On November 2, 2005, the employer gave the claimant a written warning for his November 1 profane comments and derogatory description of another employee. The employer warned the claimant that if he had another occurrence of a similar nature, the employer would discharge him.

The claimant's girlfriend, H.W., also worked for the employer. Prior to August 8, the claimant and H.W. had problems at work. The employer attempted to resolve the problem by telling both people, the claimant and H.W., they could not have any contact with one another at work.

Outside of work, the claimant and H.W. continued to have problems with their relationship. On August 8 the claimant and H.W. went to the time clock at the same time to check out. As the claimant checked out, H.W. taunted the claimant by telling him she was going to spend time

with her former boyfriend and his friends. The claimant became upset and responded by saying that H.W. would be a B---- if she did something like that. H.W. immediately reported the comment to a supervisor.

The employer started investigating the incident on August 9. The claimant admitted he made the comment after H.W. made him very upset. The claimant worked August 9 through August 16 without any incident. On August 17 the employer decided to inform the claimant he was discharged. When the employer asked the claimant to go to Banks' office, he knew he would be discharged. Instead of being embarrassed at work, the claimant left the workplace.

After the claimant made the August 8 comment to H.W., he understood his job was in jeopardy. Between August 9 and 17, the claimant requested that if the employer decided to discharge him that they do it in a way that would not cause him personal embarrassment, such as calling him to the office as they usually did when the employer discharged an employee.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant understood his job was in jeopardy if he ever used profanity at work or described a female worker in a derogatory manner. On August 8, the claimant allowed his emotions to overrule his common sense when he became upset after his girlfriend taunted him by letting him know she was going out with her former boyfriend. If this had been the first time, the claimant had referred to a female worker in the way he did, this would constitute an isolated incident and would not constitute work-connected misconduct. Unfortunately, the employer warned him about a similar incident in early November. In this case problems between the claimant and H.W. had been going on for awhile. The relationship problems he had with H.W. should have put the claimant on notice that he had to be extra careful to check his emotions so he would not become upset or emotional at work. Unfortunately, this did not occur. Since the claimant received a prior warning for a similar problem, the claimant committed work-connected misconduct on August 8, 2006. Therefore, as of August 20, 2006, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 15, 2006 decision (reference 01) is affirmed. The employer discharged him for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of August 20, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs