

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY BURNSIDE

Claimant

APPEAL NO: 12A-UI-08794-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FERGUSON ENTERPRISES INC

Employer

OC: 06/17/12

Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Larry Burnside (claimant) appealed an unemployment insurance decision dated July 23, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Ferguson Enterprises, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 15, 2012. The claimant participated in the hearing. The employer participated through Chad Corcoran, safety coordinator, and Deb Damge, human resources administrator. Employer's Exhibit One was admitted into evidence. 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:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time material handler from June 27, 2005 through June 20, 2012. He was discharged after repeated warnings and a third incident of unprofessional and inappropriate behavior. On May 3, 2012, the third shift lead witnessed the claimant fail to stop his forklift at an intersection and there was a near-miss accident. The claimant learned he was going to receive a warning and he confronted the lead on May 4, 2012 in an unprofessional manner. The claimant told the lead that he should not be issued a warning for the infraction, since the lead was not his manager and the claimant was not afraid of this lead. Since this was unprofessional conduct, it was reported to the general manager, who met with Human Resources Administrator Deb Damge and the claimant on May 7, 2012. A verbal warning was issued and the claimant was advised he must show greater respect and professionalism when addressing a lead. The claimant reported that he often responded aggressively when he was tired.

The second incident occurred on June 1, 2012 when the claimant had a verbally aggressive outburst towards a shipping lead. He approached Shipping Lead Amy Casey in the work area and began yelling at her because he could not find some product in the ship line. The incident was witnessed by two additional employees. The claimant was suspended on June 4, 2012 and returned on June 5, 2012, when he was given a final warning. He was advised that he must show immediate and significant improvement and at all times must display professional, courteous, and calm communication and conduct. The warning also advised him that any further incidents could lead to his termination.

On June 20, 2012, at 3:15 p.m., Safety Coordinator Chad Corcoran was in the shipping area following up on a directive from management. He approached the claimant and told him he would like to have a conversation with him in the near future about the gloves he was wearing, as he was not wearing the employer issued gloves. The claimant became defensive and raised his voice and he said the "crappy gloves" that the employer provided did not protect him. Mr. Corcoran explained that the claimant was required to wear them due to liability issues. The claimant made a statement to the effect that if Mr. Corcoran had to work in the plant and he was black, he would know what the claimant was talking about. Mr. Corcoran reminded him their conversation was only about gloves. The claimant continued to make comments, although Mr. Corcoran could not clearly hear him, so had to ask him to repeat his statements. The claimant believed the employer's actions were "racially motivated" and would not let it go even after Mr. Corcoran attempted to end the conversation.

There was no evidence of any other warnings or any other disciplinary problems but the claimant believes that he was discriminated against because of his race.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on June 22, 2012 for a third incident of disruptive behavior and violation of a final warning. He knew his job was in jeopardy, but could not remain professional in light of this. His allegation of racial discrimination has no basis in fact with regard to the specific actions that led up to his termination. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 23, 2012, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw