

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHILOH M ROHDE**  
Claimant

**APPEAL NO. 10A-UI-13284-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**G M R I INC**  
Employer

**OC: 08/29/10**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 21, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on November 8, 2010. Claimant participated. Employer participated through manager Tiffany Haak and Shawn Roll. Employer's Exhibit 1 was admitted to the record. Claimant's Exhibit A was admitted to the record.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a to-go specialist from November 2006 and was separated from employment on August 26, 2010. On August 24 server Barb Burson complained that claimant pinched and grabbed her buttocks, said, "This is bullshit" and "motherfucker" and was generally rude and obnoxious. On April 18, 2010 two managers warned her in writing about the use of inappropriate language. On July 28, 2010 a manager issued a final written warning about arguing with a coworker Kathy. Claimant admitted at hearing she did say "this is bullshit" in the alley in front of other coworkers.

**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.

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.

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). Claimant is commended for her honest admission of the conduct for which she was discharged but it does not excuse the use of foul language at work when she had been warned twice that it was not acceptable. Benefits are denied.

**DECISION:**

The September 21, 2010 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs