

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**RUFUS R GEORGE
1125 – 21ST ST APT 2
DES MOINES IA 50314**

**ACTION WAREHOUSE COMPANY LTD
1701 E EUCLID
DES MOINES IA 50313**

**MICHAEL S BOOHAR
ATTORNEY AT LAW
1111 – 9TH ST STE 380
DES MOINES IA 50314**

**Appeal Number: 04A-UI-11768-R
OC: 10-10-04 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Rufus R. George, filed a timely appeal from an unemployment insurance decision dated October 27, 2004 reference 01, denying unemployment insurance benefits to him. After due notice was issued, an in-person hearing was held in Des Moines, Iowa at the claimant's request on November 22, 2004, with the claimant participating. The claimant was represented by Michael S. Boohar, Attorney at Law. Kent Denning, Personnel Director, participated in the hearing for the employer. Employer's Exhibits 1 through 4 and Claimant's Exhibits A and B were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits 1 through 4 and Claimant's Exhibits A and B, the administrative law judge finds: The claimant was employed by the employer as a full-time warehouseman from August 8, 2002 until he was discharged on October 4, 2004. The claimant was discharged for insubordination arising out of an incident on Friday, October 1, 2004 and other incidents following thereafter. The claimant volunteered to work overtime on Friday, October 1, 2004. Once someone has volunteered for overtime, it becomes mandatory. At that time, the claimant was asked by two supervisors, Jerry Palmer and Jerry Koder, to go to the pallet repair area and the claimant refused. They then asked the claimant to go upstairs and do something else. The claimant did so. One of the lead men upstairs came down. The claimant became upset that the lead man did not come back up promptly and had a confrontation with Mr. Koder and Mr. Palmer, the claimant's supervisors. The claimant then came down for a break and took more than 15 minutes. Mr. Palmer told the claimant that he did not get a 30-minute break and Mr. Palmer asked the claimant to go back to work. The claimant did not go back to work, but at 11:30 p.m., was heading for the time clock. This was the end of his ordinary shift and before the overtime. Mr. Palmer asked the claimant what he was doing and the claimant said he was going home. Mr. Palmer indicated that the claimant had agreed to work overtime. The claimant refused and Mr. Palmer said that he was sorry he felt that way. The claimant clocked out and went home and did not work the overtime.

On Saturday, October 2, 2004, the claimant came to work and was getting a written warning for not working the overtime the day before. This warning is shown at Employer's Exhibit 2. The claimant became upset and started yelling at Mr. Palmer, including using the word "bullshit." The claimant told Mr. Palmer that he could fire him if he wanted but that it would not end here. The claimant then asked for a meeting and Mr. Palmer said that they would accommodate him on Monday, October 4, 2004. The claimant was then sent home. On October 3, 2004, the claimant again returned to work and was told by Mr. Palmer that there was nothing to do and to go home. The claimant clocked out and went home.

A meeting was then held on October 4, 2004, with the claimant and the employer's witness, Kent Denning, Personnel Director, along with Mr. Koder and Mr. Palmer. At that meeting the claimant requested a transfer to the third shift. He said that Mr. Palmer and Mr. Koder did not tell him what to do. Mr. Denning told the claimant that that was not the way it worked. He told the claimant that he had to do as he was told and that if there were problems to come to him. The claimant said something about just give him work and let him do the work. The claimant continued to get louder and louder. The claimant repeatedly stated that Mr. Koder and Mr. Palmer could not tell him anything and that they should stay out of his way. The claimant then left. Mr. Denning then determined to discharge the claimant and called the claimant and so informed him. An exit statement was prepared by Mr. Denning, as shown at Claimant's Exhibit B.

The employer has rules in its handbook, a copy of which the claimant received and for which he signed an acknowledgement, prohibiting threatening or intimidating fellow employees, failure to follow directions or instructions of persons having direct authority, insubordination or willful refusal to perform work, and improper moral conduct on company premises, all as shown at Employer's Exhibit 4. The claimant had also received prior written warnings, as shown at Employer's Exhibit 3, one on November 13, 2003 for a refusal to comply with instructions from a

supervisor, and on November 14, 2002 for wasting time and being out of his work area without his supervisor's permission.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties agree, and the administrative law judge concludes, that the claimant was discharged on October 4, 2004. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witness, Kent Denning, Personnel Director, credibly testified about incidents with the claimant on October 1, 2, 3, and 4, 2004. Concerning the incidents on October 1, 2, and 3, 2004, Mr. Denning's testimony is hearsay, supported by

written statements at Employer's Exhibit 1. The claimant denies much of the employer's allegations of his actions on October 1, 2, and 3, 2004. However, the claimant's denials are not credible because some of the claimant's testimony was consistent with the hearsay testimony of Mr. Denning. The claimant initially denied agreeing to work overtime, but at one point in the hearing said that he told the employer he "might" work, which appears to indicate that the claimant was anticipating working overtime. The claimant also testified that he generally worked overtime. The administrative law judge concludes that the claimant did agree to work overtime and this became mandatory overtime, but then later he refused to work overtime. The claimant admits that he refused to work overtime. On October 2, 2004, the claimant was given a warning for refusing to work overtime the day or night before. The claimant admits to this, and further admits that he got mad and upset and was yelling at Mr. Palmer about the warning, but denies using the word "bullshit." The claimant concedes that he did tell Mr. Palmer you can fire me if you want and further conceded that he said it would not end here. This certainly appears to be a threat, and agrees with the hearsay testimony of Mr. Palmer and Mr. Koder. The claimant agrees with the hearsay testimony that he requested a meeting and was sent home pending that meeting. The meeting was then held on October 4, 2004, and Mr. Denning was present and personally observed the claimant's behavior. Mr. Denning credibly testified that the claimant repeatedly stated that Mr. Palmer and Mr. Koder did not tell the claimant what to do and could not tell the claimant what to do. The claimant told Mr. Denning that Mr. Koder and Mr. Palmer should stay out of his way. The claimant denies this, but agrees that he said to just give him work and let him do the work. Even this concession seems to indicate that the claimant did not want anyone telling him what to do. Mr. Denning told the claimant that it did not work that way and that he had to do as told. The claimant continued to get louder and louder, and the claimant even concedes to this. The claimant left and then was discharged.

The claimant had received two prior warnings, as shown at Employer's Exhibit 3, and had also received a copy of the employer's handbook, at Employer's Exhibit 4, prohibiting insubordination, a willful refusal to perform work, committing acts that are improper and threatening or interfering with fellow workers, and failing to follow directions or instructions. Mr. Denning testified credibly and from personal observations as to the incidents on October 4, 2004. The administrative law judge concludes that the claimant's actions on that day alone were deliberate acts or omissions constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evince a willful or wanton disregard of an employer's interest and, at the very least, are carelessness or negligence in such a degree of recurrence all as to establish disqualifying misconduct.

The administrative law judge also concludes that the claimant agreed to work overtime on October 1, 2004, and the overtime became mandatory and then the claimant refused and got into confrontations with Mr. Palmer and Mr. Koder. The claimant was given a warning the next day, October 2, 2004, for failing to work overtime the day before and even the claimant concedes that he had another confrontation with Mr. Palmer over the written warning, including yelling and getting mad. The actions that even the claimant admits he took on October 1 and 2, coupled with the actions on October 4, 2004, further confirm that the claimant's behavior throughout this period was willful and deliberate and, at the very least, recurring negligence and was therefore disqualifying misconduct. Mr. Palmer and Mr. Koder were the claimant's supervisors. An employee must follow the instructions of his supervisors and not engage in confrontations. The claimant denies using any profanity but the administrative law judge concludes that the claimant did use the words "bullshit" and, if not that particular word, he used offensive language, all of which was in a confrontational, disrespectful or name-calling context and can be recognized as disqualifying misconduct. See Myers v. Employment Appeal Board, 462 N.W.2d 734 (Iowa App. 1990).

The claimant seems to make much of the inconsistencies in the written hearsay statements offered by the employer. The claimant also seems to indicate that he believed he was going to be transferred to the third shift after the meeting on October 4, 2004. However, there is no evidence that the claimant was told or promised that he would be transferred to the third shift. Further, as noted above, there is enough evidence directly provided by Mr. Denning of the meeting on October 4, 2004 and testimony from the claimant, to demonstrate disqualifying misconduct without reliance upon the written hearsay statements offered by the employer.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision dated October 27, 2004, reference 01, is affirmed. The claimant, Rufus R. George, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct.

b/b