

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBIN L TEMPLE**

Claimant

**APPEAL NO: 11A-UI-02757-S**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOMEMAKERS PLAZA INC**

Employer

**OC: 01/23/11**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated February 23, 2011, reference 01, that held he was discharged for misconduct on January 21, 2011, and benefits are denied. A hearing was held in Des Moines, Iowa on April 26, 2011. The claimant participated. Jamie Smith, HR Manager, Jeff Sinwell, Sales Manager, and Alma Mujanovic, Office Manager, participated for the employer. Employer Exhibits 1 – 4 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time as a sales associate on April 12, 2010, and last worked for the employer on January 21, 2011. The claimant received an employee handbook that contained the policies of the employer. The employer issued written warnings to the claimant On June 2, 2010, and December 10, 2010.

The June warning was the result of an African-American customer who complained to the employer that claimant failed to wait on him. The December warning was issued as the result of the claimant displaying an emotional outburst to his supervisor during a meeting on December 7. Claimant displayed anger and resistance to what his supervisor was trying to explain to him. The warning states that a further incident could lead to employment termination.

On January 21, claimant noticed that the office manager had left some fruit peelings un-discarded in the employee break-room/cafeteria and he went to the front office where she worked to confront her. In the presence of two other staff members, he yelled at her and became angry about her leaving the fruit peeling. He left her presence for about five seconds, and returned saying they are still there. The other staff said to the office manager they could not believe he acted that way. After Manager Sinwell watched a video of the incident, he

confirmed the claimant's behavior and angry behavior display. The employer discharged claimant for inappropriate and unprofessional behavior in light of the prior warnings.

**REASONING AND CONCLUSIONS OF LAW:**

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on January 21, 2011, for repeated incidents of unprofessional behavior.

The employer issued a warning to claimant prior to the January incident that he had a behavior problem that involved unprofessional conduct at the workplace. While the claimant had a right to ask the office manager about cleaning her fruit peelings, he exceeded the normal range of conduct by yelling and berating her in front of other staff that is misconduct. Due to the prior warnings, the most recent incident constitutes job disqualifying misconduct.

**DECISION:**

The department decision dated February 23, 2011, reference 01, is affirmed. The claimant was discharged for misconduct on January 21, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

---

Randy L. Stephenson  
Administrative Law Judge

---

Decision Dated and Mailed

rls/pjs