

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

HOWARD W LAFFOON  
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ALEXANDRIA MO 63430

KEOKUK AREA HOSPITAL  
c/o TALX UC EXPRESS  
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Appeal Number: 05A-UI-02591-CT  
OC: 02/06/05 R: 04  
Claimant: Respondent (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Keokuk Area Hospital filed an appeal from a representative's decision dated March 8, 2005, reference 01, which held that no disqualification would be imposed regarding Howard Laffoon's separation from employment. After due notice was issued, a hearing was held by telephone on March 30, 2005. Mr. Laffoon participated personally and was represented by James Hoffman, Attorney at Law. The employer participated by Louise Skow, Employment Manager; and Vicki Kokjohn, Director of Human Resources. The employer was represented by Beverly Lamb of TALX UC eXpress. Exhibits One through Seven were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Laffoon was employed by Keokuk Area Hospital from October 28, 2002 until February 9, 2005 as a full-time custodian. On April 23, 2003, Mr. Laffoon received a written warning because of inappropriate language and statements at the workplace. Coworkers reported that he frequently used profanity and referred to women as "bitches." It was also reported that he would criticize individuals' work in the presence of others or make disparaging remarks about coworkers.

On July 28, 2004, Mr. Laffoon received a written warning because he breached confidentiality. He told an individual that another employee was going to be written up. As the shift leader, he was expected to keep disciplinary matters confidential between him and the effected employee. The decision to discharge Mr. Laffoon was based on the events of January 31, 2005. He was in a basement area of the hospital with another employee, Michelle, when she referred to a third employee as "that lazy fucking nigger." She was not talking to Mr. Laffoon specifically and there was no one else in the area. As Mr. Laffoon was leaving the area, he was approached by Marinelle, who questioned him as to why he appeared troubled. He then repeated the statement made by Michelle. Marinelle apparently repeated the statement to others, including a supervisor. When management learned of the incident, Mr. Laffoon was suspended for having repeated Michelle's statement rather than bringing it to the attention of management. He was notified of his discharge on February 9, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Laffoon was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Past acts of misconduct may be considered in determining the magnitude of a current act of misconduct. However, the discharge must be predicated on a current act that constitutes misconduct within the meaning of the law. The conduct for which Mr. Laffoon received warnings on April 21, 2003 and July 28, 2004 were acts of misconduct. He knew or should have known that profanity and other inappropriate language was contrary to the employer's standards. He also should have known not to divulge the fact that a worker under him was going to be disciplined. The final conduct which triggered the discharge did not constitute an act of misconduct.

Mr. Laffoon did not divulge confidential information on January 31. Michelle's reference to a coworker was made in a public area and could have been overheard by anyone in the area. She did not make the statement in a private, confidential meeting with Mr. Laffoon. None of the employer's policies prohibit employees from repeating information from others that is not obtained in a confidential context. Although Mr. Laffoon may have used poor judgment in repeating the statement made by Michelle, he did not deliberately or intentionally violate the employer's policies or standards. For the above reasons, the administrative law judge concludes that his conduct of January 31 did not constitute misconduct.

Inasmuch as the conduct of January 31 was not an act of misconduct, it must be concluded that the discharge was not based on a current act of misconduct. The next most prior warning was in July of 2004 and would not, therefore, be a current act in relation to the February 9, 2005 discharge date. While the employer may have had good cause to discharge, conduct which

might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated March 8, 2005, reference 01, is hereby affirmed. Mr. Laffoon was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs