

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH J BASTEN
Claimant

APPEAL NO. 07A-UI-03964-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NORDSTROM DISTRIBUTION
MANAGEMENT INC**
Employer

OC: 03/25/07 R: 04
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Joseph Basten (claimant) appealed a representative's April 12, 2007 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Nordstrom Distribution Management (employer) for using profane language on the job. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 9, 2007. The claimant was represented by Todd Schmidt, Attorney at Law, and participated personally. The employer chose not to participate in the hearing.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

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 hired on October 17, 2005, as a full-time housekeeper. On March 12, 2007, the claimant met with his supervisor and pointed out some problems in the workplace. He showed the supervisor some trashcan liners that a co-worker had knotted and rigged to fall inward so the claimant would have a mess to clean out of the trashcan. The claimant said, "She can't tie a fucking knot?" The supervisor had used the word "fucking" in the workplace. The word was used commonly in the warehouse. On March 20, 2007, the employer terminated the claimant for not living up to the company's guidelines.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not participate in the appeal hearing and no evidence of misconduct was presented at that hearing. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 12, 2007 decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw