

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL L CARGILL
Claimant

OLYMPIC STEEL IOWA INC
Employer

APPEAL 16A-UI-05488-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/17/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 4, 2016 (reference 01) unemployment insurance decision that denied benefits based upon his discharge for conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephone hearing was held on May 31, 2016. The claimant, Michael Cargill, participated and testified. The employer, Olympic Steel Iowa, Inc., participated through quality assurance department manager Anthony Santiallanes, traffic supervisor Mike Wagner, and general supervisor Tracy Delathouwer. Employer's Exhibit One was received into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a quality assurance associate senior from November 8, 2010 until this employment ended on April 14, 2016, when he was discharged.

On April 14, 2016, claimant was working when he was approached by a truck driver asking him why the shipping door was not open. Claimant responded that he did not know, finished what he was doing, then went over to the shipping door. Claimant saw the driver, Roy, standing at the door knocking. Claimant testified he then went over, knocked a little louder, and stated in a raised voice that the drivers were waiting. Claimant then went back to his work. Claimant saw Roy being let into the door and noticed Wagner, who he thought looked upset. Claimant testified Wagner then became aggressive with him about knocking on the door and instructed him to go home. Claimant refused to leave, as he believed he had done nothing wrong.

Wagner testified that he was in the restroom when he heard pounding on a door. Wagner came out and saw a driver, who indicated it had been claimant pounding on the door to the shipping room. Wagner stopped claimant and asked him not to bang on the door that way. Wagner testified claimant then turned around, bumped his chest against his, and used several

profanities to express his dissatisfaction that the shipping room door had not been unlocked earlier. Wagner then told claimant to go home. According to Wagner, claimant responded that Wagner was not his boss and used profanity several more times. Wagner then went to Delathouwer to get her to address the situation.

Delathouwer testified that Wagner came to her and explained the situation, including reporting that claimant had used profanity. Delathouwer then called Santiallanes at home to tell him about the situation and then began taking witness statements. Delathouwer obtained statements from claimant, Wagner, and Roy. Claimant admitted there was a disagreement but denied swearing at Wagner. Roy's statement corroborated Wagner's and he confirmed that vulgar language was used by claimant. (Exhibit One). Delathouwer reported her findings to Santiallanes, who then informed the corporate human resources department about the situation. Prior to this incident, on January 9, 2016, claimant had been written up and suspended for using a racial slur. Claimant was warned at that time that any similar incidents going forward may lead to termination. On April 15, 2016, claimant received a call from John David at the corporate office informing him that his employment had been terminated.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The decision in this case rests, at least in part, on the credibility of the parties. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory, and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias, and prejudice. *Id.*

Claimant denies he ever swore at Wagner. Wagner's version of events remained consistent and was corroborated by Roy in his witness statement. After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using my own common sense and experience, I find the employer's version of events to be more credible than the claimant's recollection of those events.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. An employer has a "right to expect decency and civility from its employees." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 738 (Iowa Ct. App. 1990). Profanity or other offensive language in a confrontational, name calling, or disrespectful context may constitute misconduct, even in isolated situations or in situations in which the target of the statements is not present to hear them. See *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990), overruling *Budding v. Iowa Dep't of Job Serv.*, 337 N.W.2d 219 (Iowa Ct. App. 1983). "We have recognized that vulgar language in front of customers can constitute misconduct, *Zeches v. Iowa Dep't of Job Serv.*, 333 N.W.2d 735, 736 (Iowa Ct. App. 1983), as well as vulgarities accompanied with a refusal to obey supervisors. *Warrell v. Iowa Dep't of Job Serv.*, 356 N.W.2d 587, 589 (Iowa Ct. App. 1984).

In the present case, claimant used profanity towards a member of management. Conflicts in the workplace are bound to occur and it is normal that an employee may become upset with a supervisor. It is also understandable that claimant was frustrated with the situation. However, frustration does not excuse claimant's behavior. Calling a supervisor a profane name violates commonly held workplace standards. Claimant had previously been warned about using inappropriate language in the workplace and was advised that further incidents may lead to termination. Claimant's conduct on April 14, 2016 is considered disqualifying misconduct, even without prior warning. Benefits are denied.

DECISION:

The May 4, 2016 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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