

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FAITH C VASQUEZ
Claimant

APPEAL NO: 12A-UI-11976-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LANCE PRIVATE BRANDS LLC
Employer

OC: 09/09/12
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 September 28, 2012, reference 01, that held she was discharged for misconduct on September 13, 2012, and benefits are denied. A telephone hearing was held on October 30, 2012. The claimant participated. Karen Taylor, HR Director, participated for the employer. Claimant Exhibits A, B and Employer Exhibit 1 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 production packer on September 20, 2011, and last worked for the employer on September 13, 2012. The claimant received an employee handbook and code of ethics that contained the policies of the employer. The employer has a zero tolerance for a harassment violation.

On September 7 claimant was seated next to an African-American gentlemen talking to another worker about a brake problem with her truck. When describing how a relative tried to repair it, she described this as “nigger-rigged”. The African-American immediately became upset by slamming down his hand on the table and using profanity to understand why claimant had said it. He filed a harassment complaint with management and claimant was suspended.

During the investigative period, the employer received two co-worker statements that verified the complainant. On September 10 the employer questioned claimant who admitted using the words “nigger-rigged”. What further concerned the employer was the indifference communicated to the employer by saying she had used it for years and was something said among family.

The employer discharged claimant on September 13 for a zero-tolerance harassment violation for the offensive words.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on September 13, 2012, for a zero-tolerance violation of company harassment policy.

The claimant received the employer policy and she should have understood that her statement "nigger-rigged" in the presence of an African-American is a serious violation that constitutes job disqualifying misconduct. The employer did not end punishment at suspension with a return to work as it reasonably perceived due to claimant indifference about what she had done that it might happen again.

DECISION:

The department decision dated September 28, 2012, reference 01, is affirmed. The claimant was suspended on September 7 and discharged for misconduct on September 13, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css