

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

FRED W DANGER  
657 – 4<sup>TH</sup> ST NE  
MASON CITY IA 50401

WINNEBAGO INDUSTRIES  
PO BOX 12  
FOREST CITY IA 50436-0152

Appeal Number: 04A-UI-08759-CT  
OC: 07/04/04 R: 02  
Claimant: Appellant (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:

Fred Danger filed an appeal from a representative's decision dated August 11, 2004, reference 01, which denied benefits based on his separation from Winnebago Industries. After due notice was issued, a hearing was held by telephone on September 7, 2004. Mr. Danger participated personally. The employer participated by Gary McCarthy, Personnel Supervisor, and Mike Plath, Production Supervisor. Exhibits One through Five 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. Danger was employed by Winnebago from July 23, 2001 until July 22, 2004. He was employed full time as a production assembler. He was discharged from the employment.

On May 28, 2002, Mr. Danger received a verbal warning, which advised that he needed to control his emotions because his outbursts of anger were disruptive. He received a written warning on May 31, 2002, because he threw part of a cabinet outside and then slammed an overhead cabinet so hard that parts had to be replaced. It was not necessary to warn Mr. Danger again until April 6, 2004 when he engaged in an altercation with a coworker, Kendall Watson. The altercation resulted from a dispute concerning the volume of a radio at work. Mr. Danger was using profanity during the exchange but, according to witnesses the employer spoke with, Mr. Watson was not. Mr. Danger made some comment to the effect, "go fuck your mother" to Mr. Watson. He also pushed Mr. Watson with his chest during the exchange. As a result of the incident, Mr. Danger received a written warning and two-day suspension.

The final act which triggered the discharge occurred on July 22, 2004. A coworker, Shana Rogstead, asked Mr. Danger to pick up a beverage container from the floor. Mr. Danger called her a "fucking baby" and told her to quit her whining. He made a similar comment in reference to Ms. Rogstead when discussing the incident with Bob Rogstead, a relative of Ms. Rogstead. Ms. Rogstead filed a complaint and, as a result, Mr. Danger was discharged. The employer has a known work rule which prohibits using obscene or abusive language towards coworkers or others.

## REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Danger 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 in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Danger was discharged because of verbally abusive conduct towards others. Although the two warnings he received in 2002 are somewhat stale, they do establish that the employer had put him on notice that his angry outbursts would not be tolerated. Mr. Danger knew the employer had a work rule prohibiting using obscene or abusive language towards coworkers. In spite of this knowledge, he told a coworker, during a heated exchange on April 6, 2004, to "go fuck your mother." He was warned and suspended for the conduct but again used profanity towards a coworker on July 22 when he called Ms. Rogstead as a "fucking baby."

The administrative law judge does not doubt that profanity is used in the factory at Winnebago, the employer's work rule notwithstanding. However, there is a distinct difference between using profanity in conversation and using it in a name-calling or confrontational context. In fact, the employer's work rule speaks in terms of the offensive language being directed towards someone. It would be unreasonable for the employer to not expect a swear word if an employee sustained a sudden injury at work. However, it would be reasonable for the employer to expect employees to be civil toward each other. Mr. Danger breached his obligation to be civil and not swear at his coworkers on April 6 and again on July 22. Inasmuch as he had been warned about such conduct, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated August 11, 2004, reference 01, is hereby affirmed. Mr. Danger was discharged by Winnebago for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/kjf