

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TORIAN M VAUGHAN**  
Claimant

**APPEAL NO. 12A-UI-04806-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AVENTURE STAFFING & PROFESSIONAL**  
Employer

**OC: 03-25-12**  
**Claimant: Appellant (1R)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 20, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 21, 2012. The claimant did participate. The employer did participate through Kayla Neuhalfen, Human Resources Representative and Sheryl Lee, Branch Manager. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job-connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was last assigned to work at Jack Links as employed as a general labor full time beginning April 29, 2011 through July 29, 2011 when he was discharged. On July 29 the claimant was overheard using the "f-word" when speaking to another female coworker. He also was referring to that female coworker as a "bitch." It took two supervisors at Jack Link to get the claimant to leave the plant. The claimant had received a copy of the employer's handbook or policy manual that put him on notice that even one instance of use of profanity would lead to his discharge.

The claimant has worked for another employer since his separation. His last employer was Mid-Continent Contract out of Pocahontas, Iowa. It does not appear that a fact-finding interview has been conducted on the claimant's last separation from his last employer. Claimant indicates that he did report Mid-Continent Contract to the agency as his last employer when filing his claim for benefits. There has been no fact finding to discover if the claimant has requalified for benefits after his separation from the employer that is the subject of this case.

**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.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). "The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." This is ordinarily a fact question for the agency. *Budding v. Iowa Department of Job Service*, 337 N.W.2d 219 (Iowa App. 1983) is overruled "to the extent [it] contradicts this position. *Myers v. Employment Appeal Board*, 462 N.W.2d 734 (Iowa App. 1990).

The Administrative Law Judge is persuaded the claimant was using profanity on the plant floor in contravention of the employer's policy and their client's policy. The supervisor who escorted him from the floor actually heard him make the comments. Claimant's failure to abstain from use of profanity when speaking to his coworkers is disqualifying job related misconduct. Benefits are denied.

**DECISION:**

The April 20, 2012 (reference 01) 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.

**REMAND:**

The separation and requalification issue set out in the findings of fact is remanded for an initial interview and fact-finding.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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