

**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**

**ANTHONY J DUFAUCHARD
810 W 8TH ST
WATERLOO IA 50702**

**O'REILLY AUTOMOTIVE INC
D/B/A O'REILLY AUTO PARTS
ATTN PAYROLL
PO BOX 1156
SPRINGFIELD MO 65801-1156**

**Appeal Number: 06A-UI-00757-RT
OC: 12-11-05 R: 03
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Anthony J. Dufauchard, filed a timely appeal from an unemployment insurance decision dated January 10, 2006, reference 02, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on February 7, 2006, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the Notice of Appeal. Whitney Smith, Human Resources Supervisor, participated in the hearing for the employer, O'Reilly Automotive, Inc., doing business as O'Reilly Auto Parts. Employer's Exhibits One through Four were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Employer's Exhibits One through Four, the administrative law judge finds: The claimant was employed by the employer as a full time quality assurance material handler from October 17, 2005 until he was discharged on December 9, 2005. The claimant was discharged for violations of the employer's policies contained in its handbook, as shown at Employer's Exhibit One. In particular, the claimant violated the policies prohibiting the failure to treat customers, visitors, or co-workers in a courteous manner and threatening or intimidating management, supervisors, or co-workers, and engaging in any form of harassment, sexual or otherwise. Further, the claimant is charged with violating policies of the employer prohibiting the use of obscenities, profanity, or abusive language, and/or indecent or immoral conduct on or around company premises. The claimant received a copy of the handbook containing these rules and signed an acknowledgment therefore, also as shown at Employer's Exhibit One.

Throughout his employment the claimant referred to two female co-workers, Misty Johnson and Amanda Williams, using profanity and negative comments. He would repeatedly call Amanda Williams "Amanda Love Cocks." The claimant also brought up personal life matters to the two female co-workers. The claimant further asked the two female co-workers to call him "daddy." The statement of the two co-workers appear at Employer's Exhibit Two. Their statements are confirmed by a statement by another co-worker, Chester Calambes, also as shown at Employer's Exhibit Two. These statements are also confirmed by one of the statements provided by the claimant by another co-worker, Ben Van Syoc, at Employer's Exhibit Four. In a statement in his own words the claimant even admits to such statements as shown at Employer's Exhibit Three. It appears that Ms. Williams also used similarly inappropriate comments and statements to the claimant. Both were discharged for violations of the policies noted above. There was no other reason for the claimant's discharge.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer's witness, Whitney Smith, Human Resources Supervisor, credibly testified, and the administrative law judge concludes, that the claimant was discharged on December 9, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Ms. Smith credibly testified that the employer has certain rules or policies, as shown at Employer's Exhibit One, prohibiting, among other matters, threatening or intimidating co-workers and engaging in any form of harassment sexual or otherwise and failure to treat co-workers in a courteous manner and further prohibiting the use of obscenities, profanity, or abusive language and/or indecent immoral conduct on or around company premises. Ms. Smith further credibly testified that the claimant used inappropriate language to two female co-workers, Misty Johnson and Amanda Williams, including calling Amanda Williams "Amanda Love Cocks." He requested that others call him "daddy." The testimony of Ms. Smith was hearsay. The administrative law judge nevertheless concludes that it would be the kind of evidence that a reasonably prudent person would be accustomed to rely upon in the conduct of his or her serious affairs and is therefore admitted. Further, the administrative law judge notes that the hearsay testimony of Ms. Smith is confirmed by handwritten statements by numerous witnesses, as shown at Employer's Exhibits Two, Three, and Four, including the claimant himself. Accordingly, the administrative law judge concludes that the claimant committed the acts for which he was accused and for which he was discharged, and because of the employer's policies and the severity of the acts, the administrative law judge concludes that they were deliberate acts constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evince a willful or wanton disregard of the employer's interests and are disqualifying misconduct. The administrative law judge notes that Ms. Williams also used inappropriate comments to the claimant and she was discharged as well. Accordingly, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant, until, or unless, he requalifies for such benefits.

DECISION:

The representative's decision of January 10, 2006, reference 02, is affirmed. The claimant, Anthony J. Dufauchard, is not entitled to receive unemployment insurance benefits, until, or unless, he requalifies for such benefits, because he was discharged for disqualifying misconduct.

kkf/kjw