

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

ERICK J DALRYMPLE
600 RIEHL ST
WATERLOO IA 50702

BERTCH CABINET MFG INC
PO BOX 2280
WATERLOO IA 50702

Appeal Number: 05A-UI-01926-H2T
OC: 01-02-05 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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 14, 2005, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on March 10, 2005. The claimant did participate. The employer did participate through Mitzi Tann, Human Resources Manager and Maxine Matlock, Department Leader. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a custom marble top apprentice full time beginning February 26, 2002 through January 24, 2005 when he was discharged. On January 22, 2005, the claimant had a conflict with Diana Mujic. The claimant was bantering back and forth with her, she asked

him to move a template so she could finish a job she was working on. The claimant kept putting the template back in her way. His coworker finally moved it out of the way so she could finish measuring her job and the claimant became upset and pushed her box of supplies off on to the floor spilling them. The claimant used profanity when speaking to Diana by saying not to move his “fucking” template again. The claimant was not letting Ms. Mujic get her job done. The claimant had been warned about using profanity in the work place and had been warned numerous times about his conduct with other coworkers. The claimant's conduct was offensive toward his coworkers. The statements of the claimant's coworker Dan Hagen support the employer's contention that the claimant acted in a manner unacceptable for the workplace.

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 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).

An employer has a right to expect employees to conduct themselves in a certain manner. This includes not provoking or teasing coworkers or hindering the ability of coworkers to perform their jobs. The claimant may have intended to tease a coworker on January 22, but when she told him to leave her alone and to stop interfering with her ability to perform her job, the claimant should have stopped. Instead the claimant chose to escalate the situation to the point where he knocked her box of supplies off spilling some of them onto the floor. The claimant can reasonably be expected not to destroy other employee's supplies or to tease them to the point where they cannot accomplish their job duties. When the claimant was told to stop by his coworker he should have. In light of the claimant's previous history of similar conduct evidencing an inability to get along with his coworkers, the claimant's actions on January 22, amount to substantial misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The February 14, 2005, reference 02, 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.

tkh/kjf