

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES B SCHAMP
Claimant

APPEAL NO. 13A-UI-03196-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER
Employer

OC: 02/17/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 14, 2013, reference 01, that concluded he was discharged for work-connected misconduct. A hearing was held on April 25, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Julie Kilgore participated in the hearing on behalf of the employer with a witness, Tony Burrows and Mark Laughery. Exhibits One through Five were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a public safety officer from December 10, 2012, to February 8, 2013. He was informed and understood that under the employer's work rules, he was required to treat staff, patients, and visitors with respect and dignity and was prohibited from using profanity and disrespectful language.

On May 25, 2012, the claimant received a written warning for unprofessional communication and behavior. In early June 2012, a Hispanic officer had informed the claimant that he was going out to pick up some food. The claimant told the officer that he did not eat anything that rhymed with Hexican or Hinese. The officer found the comments offensive and complained to management. The claimant was counseled about the comments then and during his performance review on October 12, 2012.

On January 30, 2013, the claimant was in the unit clerk's area with two nurses. Another officer who was off duty was there with his wife and son. The officer was introducing his wife to the nurses and said he had forgotten the name of one of the nurses. The nurse whose first name was Beverly covered her name tag and commented, "it starts with B." The claimant interjected "And rhymes with Bitch." The nurse and the officer's wife both complained about the claimant's comment.

After investigating the complaints, the employer discharged the claimant on February 8, 2013, for repeated unprofessional conduct toward coworkers.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's defense that he was just joking does not excuse his conduct. He was counseled for making a comment he considered funny but was taken as offensive before. The claimant admitted his comment on January 30 was stupid but it was also hurtful and embarrassing for the nurse.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated March 14, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs