

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BOUNLEUA LOVAN
Claimant

CEMEN TECH INC
Employer

APPEAL 20A-UI-02235-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/16/20
Claimant: Appellant (1R)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Bounleua Lovan (claimant) appealed a representative's March 4, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Cemen Tech (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 27, 2020. The claimant participated personally through Chou, Interpreter. The employer participated by Ryan LeRoque, Human Resources Generalist, and Ian Beck, Fabrication Supervisor.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 9, 2019, as a full-time water spider. He signed for receipt of the employer's handbook on February 9, 2019.

On February 12, 2020, the claimant said that a co-worker looked like "a nigger". Co-workers reported the statement. The claimant admitted to the employer that he made the statement. The claimant's first language is Lao but he speaks some English and has been in the United States for thirty years. He said he was just joking. On February 12, 2020, the employer terminated the claimant for making a racial slur.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

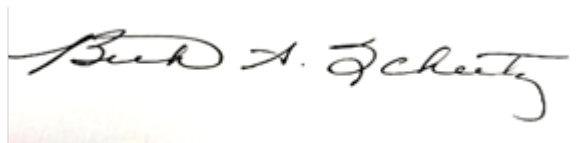
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. He intentionally made fun of another work and used a derogatory name. Even if the claimant did not know what the name meant, he knew that he was calling a co-worker a name and that name was unkind. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The representative's March 4, 2020, decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

The issue of the overpayment of benefits is remanded for determination.

A handwritten signature in cursive script, reading "Beth A. Scheetz". The signature is written in black ink on a white background.

Beth A. Scheetz
Administrative Law Judge

April 28, 2020
Decision Dated and Mailed

bas/scn