

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAMIE PETERSON
Claimant

APPEAL NO: 15A-UI-07131-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GKN ARMSTRONG WHEELS INC
Employer

**OC: 05/31/15
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 15, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 27, 2015. The claimant participated in the hearing. Peggy Taylor, Human Resources Generalist; William “Joey” Roehler, First Mover Values Stream Leader; Nicole Nicoson, Human Resources Manager; and Robb Nutt, Team Leader on the Ag Side; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time profile line associate for GKN Armstrong Wheels from December 2, 2000 to June 2, 2015. He was discharged after directing inappropriate, disrespectful, and profane language toward Supervisor William “Joey” Roehler May 29, 2015.

On Friday, May 29, 2015, Mr. Roehler was walking down the claimant’s line after having had to move an employee from the profile line to the paint line because it was the end of the month. The claimant called Mr. Roehler over to where he was and was upset because he wanted more help on the line. Mr. Roehler denied the claimant’s request for additional help because they were running short-handed. The claimant then said that was “bullshit.” He told Mr. Roehler the band line was running with three employees the night before and Mr. Roehler stated they were running with two employees because one was moved to assembly. The claimant asked for help again and Mr. Roehler said there was no one to help and told the claimant to help himself. The claimant said he was running three machines by himself and others were running one and when Mr. Roehler told him to help himself the claimant said, “Fuck it Joey.” Mr. Roehler responded, “Yes. You need help but I have no one else to give you and we aren’t working weekends so that is good and we just need to run hard and put out what we can” and said he was not asking the claimant to run 1,000 pieces but to do the best he could. The claimant suggested that another employee could run the welder and the machine next to him so the claimant would not

have to run three machines. The other employee, who was standing there, said it would still “be a pain.” The claimant said, “You are fucking worse than Matt Gross” (former supervisor) and Mr. Roehler walked away. He reported the situation to Human Resources Generalist Peggy Taylor and the employer started an investigation.

Ms. Taylor interviewed the claimant with Human Resources Manager Michelle Nicoson. They spoke to co-worker Adam Gosh and Mr. Roehler. The claimant denied telling Mr. Roehler to “fuck off” but said he might have said, “Fuck it,” when Mr. Roehler denied him additional help. He agrees he was upset because he had been working 10 or 11 hours per day and felt Mr. Roehler’s suggestion that he “work harder” and failure to provide his line more help was disrespectful.

The claimant worked Monday, June 1, 2015, and a few hours on June 20, 2015, before the employer notified him it was terminating his employment because he accumulated 13 disciplinary points within a six-month period, which results in discharge. The claimant’s actions May 29, 2015, caused him to receive all 13 points. He appealed the decision but his appeal was denied and the termination stood.

On July 20, 2013, the claimant received a written warning for leaving a disrespectful note for the off shift and received three points. Points drop off after 90 days. Employees on that shift had been cutting the lock of the claimant’s personal toolbox and the claimant was upset about it. He left a note stating they needed, “to leave his toolbox the hell alone” or something to that effect. The warning stated that any notes containing profanity in the future will not be tolerated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant's actions May 29, 2015, were inappropriate and unprofessional, the parties disagree about whether the claimant said, "Fuck you Joey" or "Fuck it," neither of which displayed good judgment and both of which would be insubordinate. However, the employer is a manufacturing setting and profanity among the employees is common on the floor although it is not common to use profanity in anger toward a supervisor. Regardless of whether the claimant said, "Fuck you Joey" or "Fuck it," it was inappropriate.

That said, however, the claimant's actions were an isolated incident of misconduct. He was upset about running short-handed and was frustrated about having to run three machines at one time. While not condoning the claimant's actions, one incident of using profanity, out of frustration, toward a supervisor as a result of being short-handed and running three machines simultaneously in a manufacturing setting where profanity is common, does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The June 15, 2015, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs