

**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**

**PETER B SODERBERG
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**APAC CUSTOMER SERVICES INC
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-02707-S2T
OC: 02/08/04 R: 04
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:

Paul Soderberg (claimant) appealed a representative's March 4, 2004 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with APAC Customer Services (employer) for using profane language on the job. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 6, 2004. The claimant participated personally. The employer participated by Turkessa Hill, Human Resources Coordinator; Wendy Salas, Human Resources Generalist; and Paul Flemr, Operations Manager.

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 October 8, 2001, as a full-time customer service representative. The claimant received a copy of the employer's Handbook and signed for its receipt on October 8, 2001. The claimant received copies of the employer's Orientation Checklist and signed for receipt on October 8, 2001, and January 15, 2004. The Handbook and Checklist prohibit the use of profanity in the workplace.

On November 21, 2003, the claimant received a written warning for using profanity or offensive language in the workplace. The claimant was referring to a co-worker when he said the employee's head was so far up his ass that he did not know what he was doing. A co-worker thought the claimant was speaking of her husband and complained to the employer about the offensive nature of the claimant's language. The claimant understood that he could be terminated for further infractions.

On February 3, 2004, the claimant completed a difficult telephone call, hung up and shouted in a loud voice "fuck you". The claimant was so loud that a customer who was on the telephone with the claimant's co-worker heard the claimant. The employer terminated the claimant on February 3, 2004, for his use of profanity.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he 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 has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Foul language of itself can constitute disqualifying job misconduct. Warrell v. Iowa Department of Job Service, 356 N.W.2d 587 (Iowa App. 1984). The claimant used foul language on two occasions. After the first occasion he was warned. The claimant's exclamation on or about November 21, 2003, resulted in a complaint filed by a co-worker. The claimant clearly disregarded the standards of behavior that an employer has a right to expect of its employees. The claimant's actions were volitional. 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.

DECISION:

The representative's March 4, 2004 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible.

bas/kjf