

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY J IZZO
Claimant

APPEAL NO. 10A-UI-04971-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO
Employer

**Original Claim: 02/28/10
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 24, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on May 12, 2010. Claimant participated. Employer participated through Director of Manufacturing Clark Vold, Production Operator Vincent Sheppard, Production Operator Caleb Lehman, and Personnel Manager Carolyn Cross.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a production operator and was separated from employment on March 1, 2010. On February 25 claimant aggressively approached Sheppard. Other witnesses confirmed inappropriate language and comments about women at other times and validated ongoing problems about these types of issues. On February 4 Sheppard confronted claimant about not performing his job duties, which slowed Sheppard. Claimant responded, "Fuck you." Sheppard reported the incident to the white hat. On February 25, when asked to do the same thing, claimant physically and aggressively (his body was shaking) approached him and cornered him against the wall. Sheppard could not hear what he was saying because of the respirator and ducked underneath him and went out the side door. There had been similar problems the entire month, including profanity used in the presence of Lehman. He had been warned in writing on January 12, 2009 when he made sexually suggestive and inappropriate comments to female employees.

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 § 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.

The multiple complaints from different sources over an extended period of time belie claimant's denial of inappropriate conduct. Claimant's repeated use of foul language directed toward and about other employees and his physical threats toward Sheppard amounts to disqualifying job-related misconduct. Benefits are denied.

DECISION:

The March 24, 2010 (reference 01) 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw