

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENNETH A IVERSON**

Claimant

**CRACKER BARREL  
OLD COUNTRY STORE INC**

Employer

**APPEAL NO. 09A-UI-14954-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**Original Claim: 08/30/09  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated September 25, 2009, reference 01 that held the claimant was not discharged for misconduct on August 29, 2009, and that allowed benefits. A telephone hearing was held on November 4, 2009. The claimant participated. Kim Wadsager, Associate Manager, participated for the employer. Employer Exhibits One through Three were received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant worked for the employer as a part-time line-cook/dishwasher from February 11, 2009 to August 29, 2009. The employer has a rule that prohibits an employee from using profanity, indecent or abusive language, or acting in a rude or boisterous manner.

On August 29, the claimant complained to GM Prine that a co-worker/grill cook was harassing him. In the presence of Prine at the grill line area of the restaurant, the claimant told the co-worker to “fuck-off.” Prine discharged the claimant for violating the work rule that prohibits the use of profanity. The claimant had not previously been warned about this type of conduct.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The administrative law judge concludes the claimant was not discharged for misconduct on August 29, 2009. This is an isolated instance in a restaurant area where some vulgar language may be expected.

An isolated instance of vulgar language where decorous language may not be expected is unsatisfactory conduct or a mere peccadillo rather than job disqualifying misconduct. Budding v. IDJS, 337 NW2d 219 (Iowa App. 1984). An employee saying "fuck you" to a supervisor in the kitchen is not considered misconduct. Parkhurst v. IDJS, (Unpublished, Iowa App. 1986).

**DECISION:**

The department decision dated September 25, 2009, reference 01, is affirmed. The claimant was not discharged for misconduct on August 29, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw