

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN E ANDERSON
Claimant

APPEAL NO. 09A-UI-11994-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLAZIN WINGS INC
Employer

**Original Claim: 06/07/09
Claimant: Appellant (1)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated August 14, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 3, 2009. The claimant participated. The employer participated by Julie Andrew, regional manager, and Susan Williams, general manager. The employer was represented by Karen Brewin. The record consists of the testimony of Julie Andrew, the testimony of Susan Williams, the testimony of Brian Anderson, and Employer's Exhibits 1 through 4. Official notice was taken of the agency file at the request of the claimant.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is a Buffalo Wild Wings restaurant in Davenport, Iowa. The claimant started working for the employer as the bar manager on November 17, 2008. He was terminated for misconduct on June 8, 2009.

The incident that led to the claimant's termination was a text message he sent to one of the bartenders that he supervised. The text message said: "You are a fucking asshole." The recipient of this message was upset about the contents and took her concern to the general manager, Susan Williams. Ms. Andrew, the regional manager, found out about the text message and she and Ms. Williams talked to the claimant. He admitted to sending the message and when asked why he did it, he replied: "Because she is a fucking asshole."

The employer decided that the claimant's conduct warranted termination. The employee handbook specifically prohibited language that was intimidating or hostile in nature and warned the use of such language could lead to termination. The claimant supervised the recipient of

the text message and she did not feel that she would be able to work with the claimant in the future.

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.

Profanity or other offensive language in a confrontational or disrespectful context may constitute misconduct, even in isolated situations or in situations in which the target of the statements is not present to hear them. See Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990). The evidence in this case established that the claimant sent a vulgar and profane text message to an employee that he supervised. The language was offensive to the recipient and its context was confrontational as well as disrespectful. The employer had a zero tolerance for such conduct.

The claimant acknowledged only that what he said was "harsh" and "not a nice thing to say." The text message, however, was profane and vulgar and totally inappropriate. The working relationship between the claimant and the recipient emphasizes the claimant's misconduct. The employer could reasonably expect that a manager would treat his subordinates with respect and that any disagreements would be handled without the use of this type of language. The claimant breached this duty to the employer. Benefits are denied.

DECISION:

The representative's decision dated August 14, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw