

**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**

**JEREMY A MILLS
1407 RIPLEY CT
MUSCATINE IA 52761-8917**

**MANPOWER INTERNATIONAL INC
MANPOWER TEMPORARY SERVICES
c/o TALX UCM SERVICES
PO BOX 66864
ST LOUIS MO 63166-6864**

**Appeal Number: 06A-UI-01627-HT
OC: 01/15/06 R: 04
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer, Manpower, filed an appeal from a decision dated February 1, 2006, reference 01. The decision allowed benefits to the claimant, Jeremy Mills. After due notice was issued a hearing was held by telephone conference call on March 20, 2006. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by Staffing Specialist Melissa Perez.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Jeremy Mills was employed by Manpower from

May 20 until December 19, 2005. He was assigned to Menasha Packaging during that time. When he was hired the claimant received a copy of the employee handbook which prohibits discrimination on the basis of race, sex, color, national origin, sexual orientation, religion and other factors.

On December 19, 2005, Staffing Specialist Melissa Perez received a call from Shane Davis who was a supervisor at Menasha Packaging. He had received a complaint from one of his employees who complained about Mr. Mills making racial comments to another employee of Manpower. Ms. Perez went to the site to investigation and interviewed the claimant and another Manpower employee who had witnessed the comments.

Mr. Mills acknowledged saying "fucking Mexicans" to an Hispanic co-worker and "teasing" this co-worker about having a green card. The employer discharged the claimant immediately for violation of the anti-harassment and discrimination policy.

Jeremy Mills filed a claim for unemployment benefits with an effective date of January 15, 2006. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 claimant violated a known company policy by using profane language in referring to a co-worker, and making racial implications that the co-worker, because he was Hispanic, needed a green card. This has the potential to create a hostile work environment for the co-worker. The employer has the obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of February 1, 2006, reference 01, is reversed. Jeremy Mills is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/tjc