

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

JIMMIE L MACLIN
Claimant

CENTRO INC
Employer

APPEAL NO. 23A-UI-00719-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/18/22
Claimant: Appellant (2)**

Iowa Code Section 96.5(2)(a) & (d) – Discharge

STATEMENT OF THE CASE:

On January 24, 2023, Jimmie Maclin (claimant) filed a timely appeal from the January 20, 2023 (reference 01) decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on December 18, 2022 for violation of a known company rule. The claimant requested an in-person hearing. After due notice was issued, a hearing was held on February 21, 2023 at the Cedar Rapids IowaWORKS Center. Claimant participated and presented additional testimony through Kelly Ball. The employer did not appear and did not participate. Exhibit A, a two-page screen shot of text messaging between the claimant and a coworker, was received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Jimmie Maclin (claimant) was employed by Centro, Inc. as a Weekend Associate and Quality Assurance worker from 2018 until December 23, 2022, when the employer discharged him from the employment for alleged harassment of a coworker. The claimant last performed work for the employer on December 18, 2022.

Before the claimant's shift ended on or about December 18, 2022, the claimant sent an unprofessional email message to a coworker, Laquisha Carter. The claimant intended the email to be good-humored banter. The claimant had two email accounts that he used in connection with the employment. One email account was the claimant's individual email account. The other email account was assigned to the machine the claimant was operating on the date in question. Messages sent from the claimant's individual email address would include the claimant's signature block. Messages sent from the email address assigned to the machine would not include a signature block identifying the sender. The claimant sent his email message from the email address assigned to the machine. The claimant advises that sending

the email from the machine account, rather than from his individual account, was merely a mistake and that he intended the recipient to know he was the sender. The subject line of the message stated "My nipples look like milk duds." The claimant intended the subject line as a humorous allusion to a movie, *Kung Pow!* In the email message, the claimant addressed the coworker as "Uglisha" and told the coworker to have a good day. Though the claimant finds humor in addressing female friends and his mother as "Uglisha," Ms. Carter interpreted the ostensibly anonymous email as harassment perpetrated by a disgruntled machine operator. Ms. Carter forwarded the email to a human resources representative. After the employer determined the claimant sent the email and spoke to the claimant about the email, the employer suspended the claimant.

On December 20, 2022, while the claimant was on suspension and waiting to hear whether he would be allowed to continue in the employment, the claimant corresponded with Ms. Carter by text message. The claimant began the exchange as follows: "Trevor talked to me and said that "uglisha" got to you. I am sorry for that. I literally say that to everyone as well. Nothing to do with your looks. You know you are a queen."

Ms. Carter responded:

I didn't know it was you I was thinking 3rd shift was being an ass towards me I seen the email before I talked with Trevor way before I forward it cuz I'm always giving out IQR's and making them go through boxes and I was thinking like they think I'm ugly and I was shook up about it so I sent the email not knowing who sent it and it had me feeling horrible. I was overly sensitive about the situation I took the word ugly hard plus I have things going on at home being called ugly my life was a low blow but we good I was shocked it was you when after I sent the email like damn Jimmie play to damn much

The claimant added: "Alright, I get it. I'm sorry again. I play too much. As long as you know I really think ur cool and wouldn't disrespect you like thag [sic]."

Ms. Carter added:

Yeah it's ok just knowing you sent it had me thinking I got a enemy on my ass but just like a told Trevor I would've never guess it was you until after he said it might have been you I was like damn that boy get on my nerves lol

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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 disqualification shall continue 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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

...

(12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.

...

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). The Iowa Legislature recently codified the definition of misconduct and included a list of conduct that constitutes disqualifying misconduct in connection the employment. See Iowa Code section 96.5(2)(d).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on

which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See Iowa Administrative Code rule 871-24.32(4).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. *Deever v. Hawkeye Window Cleaning, Inc.*, 447 N.W.2d 418 (Iowa Ct. App. 1989).

The evidence in the record establishes a discharge for no disqualifying reason. The employer did not participate in the appeal hearing and did not present any evidence to meet its burden of proving a discharge for misconduct in connection with the employment. Nor did the employer present evidence to rebut the evidence presented by the claimant. The claimant's discharge was based on the claimant's isolated error in judgment in sending the unprofessional email to the coworker. The claimant lacked an intention to harass the coworker. Nor was there intentional violation of a work rule. The communication was instead an ill-advised attempt at good-humored banter. The recipient of the email appears to acknowledge this in the text message correspondence with the claimant. The claimant otherwise performed his duties without incident. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The January 20, 2023 (reference 01) decision is REVERSED. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.



James E. Timberland
Administrative Law Judge

March 1, 2023
Decision Dated and Mailed

scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.