

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARVIN J MAUCH**

Claimant

**APPEAL NO: 08A-UI-08598-D**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMVC EMPLOYEE SERVICES LLC**

Employer

**OC: 07/13/08 R: 01  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Marvin J. Mauch (claimant) appealed a representative's September 22, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from AMVC Employee Services, L.L.C. (employer). After hearing notices were mailed to the parties' last known addresses of record, an in-person hearing was held on November 12, 2008 in Carroll, Iowa. This appeal was consolidated for hearing with one related appeal, 08A-UI-08599-D. The claimant participated in the hearing. Noele Tyson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 5, 2005. He worked full time as a salaried breeding lead worker at the employer's Bayard, Iowa swine breeding unit. His last day of work was July 6, 2008. The employer discharged him on July 7, 2008. The stated reason for the discharge was inappropriate and intimidating disciplinary action toward an employee.

On July 6 the claimant was the manager in charge at the facility. There had been an intern at the facility who in the weeks leading up to the July 1 implementation of the state's no-smoking law applicable to businesses including the employer's facilities had been making comments to various smokers in the facility that after the law went into effect he was going to get them into trouble. After July 1 the intern had continued to make such comments and appeared to be following other employees around to catch them smoking instead of doing his own job. Various employees had complained to the site manager, but nothing had been done or said to the intern. On July 6 the claimant took a call from the mother of an employee who had called because the employee had been upset by the intern's following her and comments about getting her in trouble.

The claimant decided that since he was the manager in charge that day and no one else had addressed the problem with the intern, he would handle the matter. He went into a break area where the intern and several other employees were sitting at a table. He began yelling at the intern, saying "nobody likes a weasley m- - - - f - - -ing snitch" The intern responded with some vulgar language, and the claimant replied with further vulgar language, finally saying that he wanted this "f - - -ing s - - - to end now," slamming his hand down on the table. The intern complained to the employer about this incident and quit. In its investigation, the employer found there were several employees who had witnessed the events and had been disturbed by the claimant's conduct in the matter. The employer discharged the claimant under its anti-harassment policy.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's conduct in handling the discipline of the intern shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

### **DECISION:**

The representative's September 22, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving

unemployment insurance benefits as of July 6, 2008. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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