IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

DERRICK R MIDDLETON Claimant **CNH AMERICA LLC** Employer	**APPEAL 15A-UI-09315-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/22/15** **Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 10, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 3, 2015. Claimant participated. Employer participated through Human Resources Labor Relations Specialist Jill Dunlop.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an assembly worker from April 22, 2013, and was separated from employment on July 8, 2015, when he was discharged.

The employer has a code of conduct that is given to each employee when they are hired. Claimant received a copy of the document and signed a sheet that he received it during his orientation. The code of conduct states the employer fosters a good working environment and employees are to avoid creating an intimidating climate.

On July 8, 2015, claimant had an altercation with his team leader. Claimant did not feel that the team leader was doing his job. Claimant thought the team leader should have moved an item down the assembly line faster. Claimant screamed and yelled at the team leader. Ms. Dunlop testified claimant had used profanity, including the word "f@#k," towards the team leader. Ms. Dunlop also testified claimant called the team leader a "faggot" and "bitch." Claimant denied saying these words. Because of claimant's actions, the team leader called for the supervisor and security. Claimant continued to yell and waive his arms around. The supervisor then walked both employees (claimant and team leader) to the office. As they were walking to the office, claimant was very heated and animated; the supervisor was concerned and called security. The team leader felt threatened and intimidated by claimant. Claimant told the team leader he was going to need security if claimant lost his job. When they arrived at her office, Ms. Dunlop separated both of them (claimant and team leader). Ms. Dunlop then suspended

claimant pending her investigation. During Ms. Dunlop's investigation she interviewed several employees that witnessed the incident. Ms. Dunlop also interviewed the supervisor and team leader. Ms. Dunlop also interviewed the claimant and he submitted a statement. During her interview with claimant, his union representative was present and the union representative tried to get him to calm down during the interview. There was also a union representative during all of Ms. Dunlop's interviews. Ms. Dunlop concluded claimant was to be discharged given his history (similar conduct) and that he had not obeyed his previous warning(s). Ms. Dunlop testified that claimant created an intimidating work environment. Ms. Dunlop testified that other employees did not feel safe working with claimant.

Claimant received a prior warning on February 18, 2014 for vulgar language and rudeness towards his supervisor. Claimant was told that future incidents could result in progressive discipline. Ms. Dunlop testified claimant signed the written warning. Claimant denied receiving the written warning. The discipline notes that supervisor had previously warned claimant verbally for the same conduct. Ms. Dunlop testified there were also prior undocumented incidences where claimant made other employee(s) feel intimidated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code § 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.

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).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

The employer has presented substantial and credible evidence that claimant violated the employer's code of conduct after having been warned. Claimant did not believe his team leader was doing his job correctly and moving the item down the assembly line fast enough. Claimant had an altercation with his team leader about this. Claimant was screaming and yelling at his team leader. Claimant used offensive and profane language towards his team leader. Claimant threatened the team leader that he was going to need security if claimant lost his job. Claimant's argument that he did not say these things and was not animated is not persuasive. Although the employer did not present the supervisor, team leader, or any other employees, Ms. Dunlop did interview all of these people prior to making the decision to discharge claimant. Furthermore, Ms. Dunlop's testimony is bolstered by her firsthand experience when she interviewed claimant about this incident. When Ms. Dunlop interviewed claimant to obtain his version of events, claimant's union representative tried to get claimant to calm down during this interview. Claimant's actions during this interview lend credibility to the findings from Ms. Dunlop's investigation.

"The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). The employer has presented substantial and credible evidence that claimant threatened his team leader and used inappropriate and profane language against his team leader when claimant did not feel the team

leader was doing his job. The employer has a duty to protect the safety of its employees. Claimant's threat of harm was contrary to the best interests of the employer and the safety of his coworker. This is misconduct even without prior warning.

DECISION:

The August 10, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

jp/pjs