

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**STEVEN J STAERK**  
Claimant

**APPEAL NO. 18A-UI-03141-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BASS PRO OUTDOOR WORLD LLC  
BASS PRO SHOPS OUTDOOR WORLD**  
Employer

**OC: 02/18/18  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Steven Staerk filed a timely appeal from the March 5, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Staerk was discharged on February 16, 2018 for using profane language on the job. After due notice was issued, a hearing was held on April 5, 2018. Mr. Staerk participated. Shaun Bequeaith represented the employer and presented additional testimony through Kyle Holdorf. Exhibits 1 through 5 and A through E were 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: Steven Staerk was employed by Bass Pro Outdoor World, L.L.C. as a Maintenance Lead from 2015 until February 16, 2018, when Greg Brown, Regional Human Resources Manager, discharged him from the employment. Jason Truman, General Manager, notified Mr. Staerk of the discharge decision. Mr. Staerk worked at the employer's store in Altoona. That same store housed a restaurant, Uncle Bucks Fishbowl and Grill. Kyle Holdorf was the restaurant's General Manager.

The sole incident that triggered the discharge occurred on February 9, 2018. On that day, Mr. Staerk directed offensive language at Mr. Holdorf in the presence of Zachary Frndak, a restaurant manager, and Amanda Camp, a restaurant server and lead person. The interaction occurred in the restaurant's kitchen. Mr. Staerk went to the kitchen to speak to Mr. Holdorf about a HVAC vendor issue. Mr. Staerk was concerned at the time about a serious HVAC issue that he was addressing with the assistance of the HVAC vendor. The serious HVAC issue was separate from the matter that Mr. Staerk went to the restaurant to discuss with Mr. Holdorf. The vendor had asked Mr. Staerk to speak with the kitchen staff about the need to more specifically state the kitchen's HVAC issues when contacting the HVAC vendor. Mr. Holdorf was cooking

food on the cook's line at the time Mr. Staerk approached to speak with him. Mr. Frndak and Ms. Camp were in the immediate vicinity. As Mr. Staerk approached, Mr. Holdorf complained to Mr. Staerk about Mr. Staerk's use of the restaurant's purchase card or p-card to make a purchase in excess of the \$500.00 limit Mr. Holdorf was authorized to spend without further approval. In making the complaint, Mr. Holdorf mentioned that another person, Jeff Westbay, was going to "chew [his] ass," meaning that Mr. Holdorf would be held accountable for exceeding the allowed purchase amount. Mr. Staerk erupted in anger in response to Mr. Holdorf's utterance. Mr. Staerk stepped into Mr. Holdorf's personal space. Mr. Staerk is 6'2" tall and weighs 245 pounds. Mr. Holdorf is half a foot shorter and weighs 162 pounds. Mr. Staerk called Mr. Holdorf a "fucking pussy." Mr. Staerk invited Mr. Holdorf to "go to the fucking office and have this out once [and] for all." The office Mr. Staerk was referring to was Mr. Holdorf's small office in the restaurant. Mr. Holdorf declined the invitation to go to the office. Mr. Staerk then walked off. Mr. Holdorf immediately reported the incident to Jason Truman, General Manager. A short while later, Mr. Staerk also spoke to Mr. Truman. Mr. Staerk subsequently apologized to Ms. Camp and Mr. Holdorf. Mr. Staerk's conduct violated the employer's workplace violence policy, which prohibited aggressive conduct, including threats and intimidation. Mr. Staerk was aware of the policy. The language Mr. Staerk directed at Mr. Holdorf was not common parlance in that environment.

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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 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 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

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 weight of the evidence in the record establishes misconduct in connection with the employment on February 9, 2018. On that day, Mr. Staerk knowingly and intentionally directed patently offensive, demeaning language and aggressive, threatening, behavior at Mr. Holdorf. The vulgar language by itself constituted misconduct in connection with the employment. The threat of violence by itself constituted misconduct in connection with the employment. To make matters worse, Mr. Staerk elected to demean Mr. Holdorf in the presence of his subordinates, thereby undermining Mr. Holdorf's authority. The weight of the evidence establishes that Mr. Staerk knew that his offensive language and aggressive conduct violated the employer's work rules at the time of the incident. Mr. Staerk's concern about the serious HVAC issue is a mitigating factor, but did not justify or excuse the misconduct. Mr. Staerk's status as a valued employee is not a mitigating factor. Mr. Staerk's conduct demonstrated an intentional and substantial disregard of the employer's interests in maintaining a safe, civil work environment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Staerk was discharged for misconduct in connection with the employment. Accordingly, Mr. Staerk is disqualified for benefits until he has worked in and been

paid wages for insured work equal to ten times his weekly benefit amount. Mr. Staerk must meet all other eligibility requirements. The employer's account shall not be charged.

**DECISION:**

The March 5, 2018, reference 01, decision is affirmed. The claimant was discharged on February 16, 2018 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs