

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**NICHOLAS C HOLST**  
Claimant

**R C CASINO LLC**  
Employer

**APPEAL 25A-UI-03063-PT-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/30/25**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Nicholas Holst, filed an appeal from a decision of a representative dated April 21, 2025, (reference 01) that held the claimant ineligible for unemployment insurance benefits after a separation from employment. After due notice, a telephone hearing was held on May 7, 2025. The claimant participated personally. The employer, R C Casino, LLC, participated through Human Resources Business Partner Marcy Smith and Security Director Paul Sikorski. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Whether the claimant was discharged for disqualifying, job-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant began working as a full-time security officer for R C Casino, LLC on September 28, 2022. The claimant was separated from employment on March 27, 2025, when he was discharged.

As a security officer, the claimant was responsible for working at various posts, performing rounds, checking customer ID's, and verifying the credentials of employees and vendors. The claimant worked from 10:30 p.m. to 6:30 a.m. Wednesday through Sunday. The employer has a written employee manual that contains a code of conduct policy. The code of conduct policy requires employees to behave professionally and respectfully towards others while at work and prohibits employees from engaging in hostile or threatening behavior. The claimant received a copy of the employee manual and was familiar with the employer's work rules and policies.

On March 22, 2025, the claimant was stationed at a post at the front of the casino gaming floor to monitor customers and to make sure no minors entered the gaming floor. While at the post, a customer approached who appeared to be under 21 years of age. The claimant's coworker asked the customer if he had an ID or passport. However, the customer did not have either form of identification. The customer then presented a casino gaming card and asked if he could verify his identity through his casino account. The claimant told the employee that he could not enter the gaming floor without a valid ID or passport.

Pursuant to the employer's security protocols, if a customer does not have a valid form of identity, but presents evidence of a casino-account, at the security supervisor's discretion, the security supervisor may question the customer and review the customer's account information to verify the customer's identity. For this reason, the customer asked to speak with the security supervisor. The claimant radioed the security supervisor, explained the situation, and asked the supervisor not to let the customer onto the gaming floor because the claimant thought it would undermine he and his coworker's authority. A short time later, the security supervisor arrived at the claimant's post and took the customer to a back room. The claimant finished his rotation at the post and then went on break.

While walking to the breakroom, the claimant ran into the security supervisor. The claimant asked his supervisor whether he had allowed the customer to enter the gaming floor. The claimant's supervisor said he had allowed the customer onto the gaming floor with a warning. This upset the claimant, so he responded in an exasperated tone, "You just gave him a warning?" The claimant then walked to the breakroom.

In the breakroom, the claimant paced back-and-forth while complaining to a couple of other employees about the security supervisor allowing a customer to enter the gaming floor without a valid form of identification. While the claimant was venting, the security supervisor walked by the breakroom door and shouted, "Quit your bitching!" This upset the claimant, so he shouted back, "Fuck you, Brett!" The security supervisor then walked away and the claimant returned to work.

A few days later, the employer asked the claimant and his supervisor to provide written statements about what happened on March 22, 2025. After reviewing the written statements as well as surveillance footage from that night, the employer called and informed the claimant that his employment was being terminated effective immediately due to violations of the employer's code of conduct policy. Prior to his termination, the claimant had not received any warnings or discipline concerning his behavior in the workplace and he did not believe his job was in jeopardy.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code section 96.5(2)(a) and (d) provide:

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.

...

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.

Iowa Admin. Code r. 871-24.24(3) provides:

(3) *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence are not sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct is resolved.

Iowa Admin. Code r. 871-24.24(7) provides:

(7) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee.

Every employer is entitled to expect civility and decency 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." *Henecke v. Iowa Dep't of Job Serv.*, 533 N.W.2d 573, 576 (Iowa App. 1995). However, the use of profanity or offensive language is not automatically disqualifying for unemployment insurance benefits purposes. The "question of whether the use of improper language in the workplace is misconduct is nearly always a fact question... [and] must be considered with other relevant factors..." *Myers v. Employment Appeal Board*, 462 N.W.2d 734, 738 (Iowa App. 1990).

An Employment Appeal Board decision set forth six aggravating factors to be considered when examining an employee's use of improper language: "(1) cursing in front of customers, vendors, or other third parties; (2) undermining a supervisor's authority; (3) threats of violence; (4) threats of future misbehavior or insubordination; (5) repeated incidents of vulgarity; and (6) discriminatory context." Emp. App. Bd. Hrg. No. 16B-UI-08787, at \*3 (Emp. App. Bd. pub. Oct.

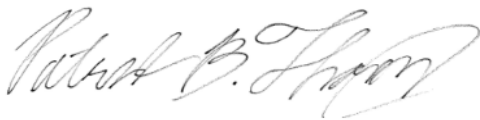
21, 2016) (citing cases). The Employment Appeal Board also suggests that the general work environment is a relevant consideration in analyzing profanity. *Id.* It must be considered with other relevant factors, including the context in which it is said, and the general work environment.” *Myers v. Emp’t Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Vulgar language in front of customers can constitute misconduct, *Zeches v. Iowa Dep’t of Job Serv.*, 333 N.W.2d 735, 736 (Iowa Ct. App. 1983), as well as vulgarities accompanied with a refusal to obey supervisors. *Warrell v. Iowa Dep’t of Job Serv.*, 356 N.W.2d 587, 589 (Iowa Ct. App. 1984). Likewise, the repetition of vulgarities can elevate a minor peccadillo to an act of willful misconduct. *Carpenter v. Iowa Dep’t of Job Serv.*, 401 N.W.2d 242, 245-46 (Iowa Ct. App. 1986).

In this case, the claimant acknowledges that on March 22, 2025, he became upset, vented his frustrations to some coworkers, and then said something to the effect of, “Fuck you, Brett,” to his supervisor. While the claimant’s actions may have violated the employer’s work rules, the claimant credibly testified that his actions arose from a momentary lapse of judgement due to feeling undermined by his supervisor’s decision and provoked by his supervisor’s rude and goading remark.

An employer can discharge an employee for any reason or no reason at all, provided that reason is not illegal. However, the employer may be liable to fund the employee’s unemployment insurance benefits if the employer does not establish that it discharged the employee for disqualifying, job-related misconduct. Here, the employer has not shown that the claimant committed a final willful act in deliberate disregard of its interests. The claimant’s confrontation with his supervisor was brief, his remark was not threatening, and the claimant had no prior discipline for similar behavior. An employee raising their voice and briefly using profanity in their own defense—without more—is not disqualifying misconduct. The employer has not met its burden of proving the claimant was discharged for disqualifying, job-related misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The April 21, 2025, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment on March 27, 2025, for no disqualifying reason. The claimant is allowed benefits, provided he remains otherwise eligible.



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Patrick B. Thomas  
Administrative Law Judge

May 15, 2025  
Decision Dated and Mailed

PBT/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:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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.