

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUSAN M RISINGER**

Claimant

**APPEAL NO. 12A-UI-10601-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KUNAU IMPLEMENT CO**

Employer

**OC: 07/29/12**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated August 20, 2012, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 8, 2012, on Davenport, Iowa. The claimant participated personally. The claimant was represented by Steve Stickle, attorney at law. The employer was present by Todd Kunau, president, and Bob Garien, parts manager. The record consists of the testimony of Todd Kunau; the testimony of Bob Garien; the testimony of Susan Risinger; and Employer's Exhibits 1 through 15.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a farm equipment dealership with locations in DeWitt, Iowa, and Preston, Iowa. The claimant worked at the DeWitt location. She worked as a "parts person" with the shop and the service department in the lawn and garden area. She was a full-time employee. Her last day of work was July 30, 2012. She was terminated on July 30, 2012.

The events that led to the claimant's termination culminated during the week of July 23, 2012. The claimant and another woman named Brenda Hicks worked at the DeWitt location. These two women did not get along and there was bickering between them on a frequent basis. The source of the animosity could not be pinpointed by the employer. The claimant's supervisor was Bob Garien and Ms. Hicks' supervisor was Mark Hennigsen. The employer asked both women to take online classes on business etiquette and professional behavior. A meeting had been held on March 6, 2011, with both women to explain that it was necessary that they work together and put aside whatever personal conflict was present between them. Occasionally there was improvement, but the arguments and petty behaviors continued.

On July 24, 2012, the claimant placed what she thought was a warranty work order on Ms. Hicks' desk. Ms. Hicks was responsible for doing warranty work. Ms. Hicks did not believe that this was a warranty work order and came out of her office. She said to the claimant, "What the hell am I supposed to do with this?" She then proceeded to throw the work order at the claimant. Another employee witnessed the event and heard the claimant mutter under her breath about Ms. Hicks to another employee. (Exhibit 8)

On July 25, 2012, Ms. Hicks was leaning on the rear counter in the parts department. This counter was the claimant's work area. Ms. Hicks was talking with someone. The claimant went through the swinging door and the door then hit Ms. Hicks' purse. There was also an incident during the week when the claimant was making copies in Ms. Hicks' office because the copier was located there. Ms. Hicks switched off the light on the claimant.

The final incident occurred on July 27, 2012, which was a Friday, at approximately 5:15 p.m. Ms. Hicks had changed clothes and was heading out for the evening. She went through the parts department, which is where the claimant was finishing her work. Ms. Hicks looked at the claimant and asked her, "What's your problem." The claimant responded that she did not have a problem. The discussion escalated into an argument and the claimant called Ms. Hicks a "Hoochie Momma" and that she dressed like a slut. Ms. Hicks got upset and called Todd Kunau, the president, to make a complaint. The claimant then got on the phone and admitted that she had said these things. Mr. Kunau told the claimant that this was not appropriate. The claimant refused to retract her comments and that she was only telling the truth. The claimant was then asked how she would expect Ms. Hicks to feel and the claimant said she did not care. She then remarked to Bob Garien that she just "put a nail in her own coffin."

Mr. Kunau, Mr. Garien, and Mr. Hennigsen discussed the situation extensively over the weekend. Prior to the Friday incident, Mr. Kunau was going to ask the claimant and Ms. Hicks to meet with a representative from Dale Carnegie on how to work together in a professional manner. The employer decided that the situation had progressed too far for that to be effective. Other employees felt they were "walking on eggshells" around the claimant and Ms. Hicks. Both women were terminated on July 30, 2012. The atmosphere at the store has completely changed since both the claimant and Ms. Hicks were terminated.

The employer has a written policy, of which the claimant was aware, that prohibits employee harassment. Employee harassment is defined in part as any unwelcome conduct that unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment.

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

Iowa Code section 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.

871 IAC 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.

871 IAC 24.32(8) provides:

(8) 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Profanity or other offensive language in a confrontational or disrespectful context may constitute misconduct, even in isolated situations or in situations in which the target of the statements is not present to hear them. See Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990). In Henecke v. IDJS, 533 N.W.2d 573 (Iowa App. 1995), the Iowa Court of Appeals stated that an employer has the right to expect decency and civility from its workers. The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. It is undisputed that the claimant used offensive language, i.e., "hoochie momma" and "slut," in talking with a fellow employee in a confrontational context. The claimant's explanation that she "snapped" and had just had enough is not credible. The bickering and name calling and muttering under the breath had been going on for at least a year. A critical piece of evidence was the testimony that the claimant was given an opportunity to apologize and refused to do so because she was only telling the truth. Both the claimant and Ms. Hicks were responsible for creating an intolerable workplace, not only for themselves but for other employees as well. This was a violation of the employer's written and known policies. The employer has shown misconduct. The claimant breached her duty of civility and geniality. Benefits are denied.

**DECISION:**

The representative's decision dated August 20, 2012, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw