

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARISTEAL BENNETT

Claimant

APPEAL NO: 09A-UI-06909-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPERT JANITORIAL SERVICE LLC

Employer

OC: 04/12/09

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Aristeal Bennett (claimant) appealed an unemployment insurance decision dated April 30, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Expert Janitorial Service, LLC (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 2, 2009. The claimant participated in the hearing. The employer participated through owner Bruce Volz. 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:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time custodian from November 14, 2008 through February 11, 2009. He was advised during orientation that he could not use profanity or unfit language while working. A female co-employee was assigned to work with the claimant and voluntarily quit on December 19, 2008 because she could no longer tolerate the claimant's language or sexually explicit comments. The employer asked the employee if she wanted to file a sexual harassment complaint but the employee elected not to do so since she may have responded to the claimant in kind. The employer warned the claimant at that time that he could not use inappropriate language while working.

The claimant was assigned to work at Geico Insurance Facility in Coralville, Iowa. He typically started work at 9:45 p.m. and there were approximately 40 insurance employees working at that time. By midnight, there were only 15 to 20 employees working. The claimant frequently used profanity by saying comments such as, "I don't need this fucking job" and "this job sucks." His comments were loud enough that the employees heard him and complained to the facilities manager. The complaints were frequent enough and serious enough that the facilities manager

advised the employer the account would be cancelled unless the claimant was removed from the account. The employer had no other choice but to discharge the claimant.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for using profanity after being warned. He was advised it would not be tolerated at the time of hire and was again warned when another employee quit directly because of the claimant's language. The claimant's continued use of inappropriate language 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated April 30, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs