

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JOSHUA D YOUNG
4216 FRANCES ST APT 59
OMAHA NE 68105-2851**

**OWEN INDUSTRIES INC
PO BOX 1085
OMAHA NE 68101**

**Appeal Number: 06A-UI-07591-S2T
OC: 06/18/06 R: 01
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Joshua Young (claimant) appealed a representative's July 20, 2006 decision (reference 02) that concluded he was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 15, 2006. The claimant participated personally. The employer participated by Brad Johnson, Vice President of Human Resources, and Dan Koger, Night Foreman. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence

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 hired on October 19, 2005, as a full-time welder. The employer issued the claimant a verbal warning for attendance issues on February 27, 2006. On April 19, 2006, the employer issued the claimant a verbal warning and a one-day suspension for having a bad attitude and mood swings.

On June 16, 2006, at 2:00 a.m., the foreman looked over at the claimant from a distance and saw that he was sitting down with his feet in the air. The foreman motioned for the claimant to put his feet down. The claimant turned his back on the foreman. The claimant's co-worker started laughing. The foreman assumed the claimant said something derogatory about the foreman and became angry. He approached the claimant, leaned closed to him and said, "Don't be an ass". The claimant asked what he had done. The foreman walked off.

Later, the claimant said he was mad at the foreman and was going to go looking for him. Near the end of the shift, the foreman approached the claimant. The foreman explained to the claimant that he thought the claimant made a derogatory remark about him to the co-worker. The claimant pointed to a surface where he had written "Don't be a dick, Dick". The claimant wiped the words away and started laughing. The foreman walked away and the claimant called the foreman an asshole.

During the last 15 minutes of the shift, the claimant danced with a broom while sweeping his area and singing "Don't be a dick, Dick". As the claimant was leaving he raised his middle finger to the quality control safety direct and said, "Fuck you".

On June 19, 2006, the employer terminated the claimant for insubordination. The claimant remembers part of the shift and cannot remember other parts. The claimant testified that he suffers from diabetes and he probably had an insulin reaction that evening.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he was.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Foul language of itself can constitute disqualifying job misconduct. Warrell v. Iowa Department of Job Service, 356 N.W.2d 587 (Iowa App. 1984). The claimant had a poor attitude on two occasions. After the first occasion, he was warned. The claimant's attitude and name calling on June 16, 2006, was misconduct. The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. While the claimant states that he might have had an insulin reaction, the claimant has failed to provide any proof of his blood sugar level and how he could have been affected over the length of his shift without having a seizure or any other medical issues. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's July 20, 2006 decision (reference 03) 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 has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

bas/kjw