

**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**

**ARNE I RASMUSSEN
2544 – 250TH AVE
MILFORD IA 51351**

**ROHLIN CONSTRUCTION COMPANY INC
PO BOX 137
ESTHERVILLE IA 51334-0137**

**MICHAEL L ZENOR
ATTORNEY AT LAW
PO BOX 317
SPENCER IA 51301**

**Appeal Number: 05A-UI-11697-CT
OC: 10/23/05 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:

Arne Rasmussen filed an appeal from a representative's decision dated November 9, 2005, reference 01, which denied benefits based on his separation from Rohlin Construction Company, Inc. (Rohlin). After due notice was issued, a hearing was held by telephone on December 5, 2005. Mr. Rasmussen participated personally and was represented by Michael Zenor, Attorney at Law. The employer participated by Carla Gates, Personnel Director. Exhibits One through Five were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Rasmussen was employed by Rohlin from

August 23, 1993 until October 11, 2005. He was last employed as manager for the Spencer, Iowa, area. He was discharged after a verbal confrontation with a coworker.

On October 10, 2005, Mr. Rasmussen entered the office of Pat Monahan, slammed the door, and began berating him. He was upset over Mr. Monahan's handling of a letter received from the City of Primghar regarding Mr. Rasmussen's failure to provide a date on which requested work was to be completed. The letter was addressed to Mr. Monahan, and he shared it with Randy Ziegler, vice president. When Mr. Rasmussen was given the letter, he made the following notation on the bottom: "This statement is a damn lie. I have not talked to Dan or anyone else since August 8th & I sure as hell would like to know who is responsible for sending this bullshit to my office without contacting me."

Mr. Rasmussen felt Mr. Monahan should have approached him directly regarding the letter rather than taking the matter to Mr. Ziegler. When he confronted Mr. Monahan on October 10, he used an extensive amount of profanity and referred to Mr. Monahan as a "son-of-a-bitch." His voice was raised to the extent that it could be heard in the next office where Carol Meyer was seated. After a few minutes, Mr. Rasmussen left the office, slamming the door behind him. The employer met with him on October 11 to review what had transpired. As a result of the October 10 incident, Mr. Rasmussen was discharged on October 11, 2005, as his actions were considered a violation of the employer's code of conduct prohibiting the use of profanity.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Rasmussen was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Rasmussen was discharged for violating the employer's code of conduct by directing profanity towards a coworker. The employer is a construction business. The administrative law judge appreciates that a certain amount of profanity is to be expected on a construction site. Mr. Rasmussen's conduct of October 10 did not occur on a construction site but in the offices of Rohlin. Furthermore, the employer had the right to expect him to treat coworkers with civility regardless of the work location. Mr. Rasmussen's conduct included inappropriate name-calling as he referred to Mr. Monahan as a "son-of-a-bitch" in a voice loud enough to be overheard by at least one other person.

Mr. Rasmussen acknowledged that he used profanity in speaking to Mr. Monahan but denied that the incident was as egregious as portrayed by Mr. Monahan. Given the notation made by Mr. Rasmussen on the letter from the City of Primghar, a notation that contained profanity, the administrative law judge believes that Mr. Monahan's version of what transpired is, more likely than not, a true and accurate version of the events. Inasmuch as he intended to send the letter with the notation to the City of Primghar, the administrative law judge considers it unlikely that Mr. Rasmussen would have refrained from venting his anger directly to a coworker.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Mr. Rasmussen's conduct in verbally accosting a coworker in anger, using profanity, and engaging in name-calling in the presence of another constituted a substantial disregard for the standards the employer had the right to expect. It is concluded, therefore, that misconduct has been established and benefits are denied.

DECISION:

The representative's decision dated November 9, 2005, reference 01, is hereby affirmed. Mr. Rasmussen was discharged by Rohlin for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/kjw