

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY O KIERSTEAD
Claimant

APPEAL NO: 13A-UI-08523-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

M & M STAFFING INC
Employer

OC: 07/15/1222
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's July 22, 2013 determination (reference 02) that disqualified him from receiving benefits and held the employer's account subject to charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Bruce Muskin, the president, and Russell Mann appeared on the employers' behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits based on a July 2 employment separation.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant registered to work for the employer's clients. The employer assigned the claimant to job at Dimatic Tool & Die on July 1, 2013. After the claimant worked one day at this assignment, the client asked the employer to remove the claimant from the assignment. The client made this request after a Dimatic Tool & Die employee reported the claimant told him that he, the claimant, would shoot people with his M-16 and AK-47 and that everyone would read about it in the newspaper. The claimant did not threaten any specific person, but the employee indicated he did not feel safe around the claimant.

The claimant denied making the comment that the client reported. Even though the claimant was in the military, he does not own an AK-47.

After the employer received the client's report, the employer informed the claimant on July 2 that he was removed from the assignment and the employer would not assign to any other job.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

As a result of the incidents of work place violence, Dimatic Tool & Die was justified in asking the employer to remove the claimant from the assignment. Since the person who reported this comment did not testify at the hearing, the claimant's testimony as to what he said must be given more weight than the employer's reliance on unsupported hearsay information from a person who did not testify at the hearing. The evidence does not establish that the claimant committed work-connected misconduct. The claimant may have used poor judgment if he had any discussion with a Dimatic Tool & Die employee about guns, but the evidence does not establish that he made any threatening comment or even made the comment the employee reported. Therefore, based on the reasons for this employment separation, as of June 30, 2013, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers on the claim year established the week of July 15, 2012. During the claim year, July 15, 2012, through July 13, 2013, the employer's account will not be charged.

DECISION:

The representative's July 22, 2013 determination (reference 02) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. Based on the reasons for this employment separation, as of June 30, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. During the claimant's benefit year, July 15, 2012, through July 13, 2013, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css