



The Employer, along with a union representative, questioned Mr. Carmichael about his behavior the following day to which he responded that he was joking. (39:05-39:37) Claimant had no prior verbal or written warnings. (11:09-11:15; 15:30-15:35; 30:21-30:24) However, due to the nature of his threat (comments about 'cutting off heads...someone's going to die today' as well as pretending to sharpen the knife and mimicking a slicing motion across his chest) (21:38-21:49), the Employer bypassed all progressive discipline and terminated Mr. Carmichael. (14:04-15:00; 19:10-19:28; 40:00-40:10)

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

Iowa Code Section 96.5(2)(a) (2013) provides:

*Discharge for Misconduct.* If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993).

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 substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

The record establishes that the Employer has a protocol in place to accommodate Mr. Carmichael's needs should he feel overwhelmed on the job. Mr. Carmichael's behavior, however, violated several of the Employer's policies when he threatened his co-worker with physical harm, and made such a threat with the use of the Employer's equipment. Whether or not the knife was sharp enough, or whether the Claimant 'was just joking' is irrelevant given his threat and apparent unstable mental condition. The Employer does not have the luxury or expertise to determine whether the Claimant meant what he said or not. The Employer has a duty to protect its employees and the workplace, generally, from harm.

Although the record establishes that the Claimant received no prior warnings. That was not necessary here. Any reasonable person would know such behavior is not in the Employer's best interests. We find Mr. Carmichael's excuse that he was just joking, not credible, and indicative that he knew his behavior was very worthy of discipline. The Employer was not obligated to follow its progressive disciplinary schedule under the circumstances, as Mr. Carmichael's behavior was so egregious that even a single act constituted misconduct by its very definition.

And even if we were to consider the Employer's policy regarding company violations, the Claimant's threat against a fellow employee subjected him to 5-day suspension for the 1<sup>st</sup> violation, and termination for the 2<sup>nd</sup> violation. Mr. Carmichael made two threats in the same day. Additionally, he used company property in an unauthorizable manner to add credence to his threat. Based on this record, we would conclude that the Employer satisfied their burden of proof.

**DECISION:**

The administrative law judge's decision dated October 1, 2014 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for disqualifying misconduct. Accordingly, he is denied benefits until such time 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. See, Iowa Code section 96.5(2)"a". The Board would also remand this matter for a determination of whether the Claimant is able and available for work.

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Kim D. Schmett

AMG/fnv

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Ashley R. Koopmans