

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BYRON MIDDLEKAUFF
Claimant

APPEAL NO: 13A-UI-03363-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AFFORDABLE HEATING & COOLING INC
Employer

OC: 02/10/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Byron Middlekauff (claimant) appealed an unemployment insurance decision dated March 11, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Affordable Heating & Cooling, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 23, 2013. The claimant participated in the hearing. The employer participated through owner Bryan Thumma. 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 claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

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 hvac installation apprentice from September 6, 2011 through December 10, 2012 when he was discharged for violation of company policy. The employer has a policy which prohibits: 1) possessing dangerous or deadly weapons on company premises; 2) possessing dangerous or deadly weapons while off company premises in performance of company duties; 3) possessing dangerous or deadly weapons on customer's property; and 4) transporting dangerous or deadly weapons in a company vehicle. Violation of these policies will result in immediate termination and the claimant signed for receipt of the employee handbook on September 6, 2011.

One of the employer's supervisors visited a job site in Marion on the afternoon of December 7, 2012 and saw the claimant walking from the back of the customer's residence carrying a shot gun. The customer lived adjacent to a soccer field. The claimant did not know the customer prior to his employment with the employer and he does not have an independent relationship with the customer. The claimant said the customer gave him permission to conduct target

practice on the customer's property. The employer was unaware of this and would not have approved it.

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 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 to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on December 10, 2012 for violating the employer's policy by carrying a loaded shotgun on a customer's property. While he denies doing anything wrong, his actions were in clear violation of company policy and could have resulted in serious injury or death. If he wanted to target practice with his shotgun, he should have gone to a gun range which is designed specifically for that purpose. Simply because the employer's customer has a lot of land, did not make it safe for him to shoot his weapon. The claimant denies knowledge of the employer's policy prohibiting this action but even a reasonable person would know that it is inappropriate to carry and discharge a loaded weapon on his employer's customer's residential property. The claimant's conduct 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 March 11, 2013, 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/tll