

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THOMAS L ALLEN**  
Claimant

**APPEAL NO. 07A-UI-05877-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES MOINES INDEPENDENT COMMUNITY  
SCHOOL DISTRICT**  
Employer

**OC: 05/13/07 R: 02**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Des Moines Independent Community School District (employer) appealed a representative's May 31, 2007 decision (reference 01) that concluded Thomas L. Allen (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 28, 2007. Robert Wright, Jr., Attorney at Law, represented the claimant, who was present at the hearing. Cathy McKay and Doug Williard appeared on the employer's behalf. 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:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer on August 31, 1999. The claimant worked as a full-time transportation specialist. He supervised other mechanics, including G.T. and D.N. Todd Liston supervised the claimant.

During his employment, the employer concluded the claimant used inappropriate language at work two times. The language the claimant used was race related. The first incident occurred within the last three years. The second incident occurred during the fall of 2006. As a result of the second incident, the employer suspended the claimant.

When the claimant's most recent job as a supervisor became available, the employer chose the claimant over another employee, G.T. The claimant has had varying problems with G.T. since he became his supervisor. In mid-February 2007, G.T.'s job was in jeopardy because the claimant discovered he had falsified some paperwork and reported the incident to Liston.

On or about February 17, G.T. and D.N. made a complaint that in the fall of 2006 the claimant hit D.N. in the head with a box of parts and threatened to throw a creeper into D.N.'s car window. After the employees made the complaint, the Amanda Easton investigated the complaint. The employer also put the claimant on a paid administrative leave on February 22, 2007. After talking to various employees, Easton submitted a written report on April 17, 2007. Easton concluded the complaint was founded and the claimant created a hostile work environment for employees.

As a result of Easton's report, Williard talked to the claimant about the report and the complaint. The claimant denied that he had ever hit D.N. or any employee in the head and had never threatened to commit any physical damage to an employee's property. Relying on Easton's report, the employer discharged the claimant on May 16, 2007. The employer discharged after concluding the claimant hit another employee in the head and threatened to harm an employee's property.

### **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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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The employer discharged the claimant for business reasons, but did not establish that he committed work-connected misconduct. The employer relied on third-hand information from witnesses who did not testify at the hearing. The employer's witnesses had not even talked to G.T. or D.N. The employer discharged the claimant for incidents that occurred in the fall of 2006 but were not reported until mid-February 2007. The evidence does not establish why employees waited so long to report any alleged physical threats or contact. The claimant's

testimony is credible and must be given more weight than the employer's unsupported hearsay information. Therefore, a preponderance of the evidence does not establish that the claimant hit D.N. in the head or threatened to physically harm his vehicle. The facts do not establish that the claimant committed work-connected misconduct. Therefore, as of May 13, 2007, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's May 31, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of May 13, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css