

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTOR J CASILLAS
Claimant

APPEAL NO. 13A-UI-12905-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

AUTOZONERS LLC
Employer

**OC: 10/13/13
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated November 13, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on December 10, 2013. The claimant participated personally. The employer participated by Matthew Pulcini, the regional human resources manager. The record consists of the testimony of Matthew Pulcini and the testimony of Victor Casillas.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a retail automotive chain. The claimant worked as store manager at a store located in Omaha, Nebraska. The claimant was hired on January 12, 2012. He was terminated on October 14, 2013.

The incident that led to the claimant's termination occurred on September 24, 2013. A former employee had come into the store and was waving a Magnum 45 gun. The claimant tapped him on the stomach and told him to put the gun away. This former employee filed a complaint saying that the claimant had hit him in the genitals. The claimant was interviewed on October 2, 2013. He was not terminated until October 14, 2013.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors of judgment or discretion in isolated instances. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. There is insufficient evidence in this record to show misconduct. The claimant credibly testified that he tapped a former employee on the stomach after that employee showed up at the store with a pistol. There is no policy of the employer that forbids customers from coming into the store with a firearm. The former employee made a threat and the claimant acted reasonably in telling him to put the gun away. The former customer did not testify at the hearing. Other employees who might have witnessed all or part of the incident also did not testify. At best the claimant may have used poor judgment in touching the former employee. A single instance of poor judgment is not misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated November 13, 2013, reference 01, is affirmed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css