

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DONALD K PHIPPS**  
Claimant

**HORMEL FOODS CORPORATION**  
Employer

**APPEAL 20A-UI-01387-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/19/20  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On February 15, 2020, Donald K. Phipps (claimant) filed an appeal from the February 10, 2020, reference 01, unemployment insurance decision that denied benefits based upon the determination Hormel Foods Corporation (employer) discharged him for violation of a company rule. The parties were properly notified about the hearing. A telephone hearing was held on March 3, 2020. The claimant participated personally. The employer participated through Elizabeth Dean, Human Resources and Safety Manager, and was represented by Diana Perry-Lehr from Employers Unity. The Employer's Exhibits 1 through 10 were admitted into the record.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Machine Operator beginning on October 27, 2014, and was separated from employment on January 21, 2020, when he was discharged. The employer has policies regarding safety in the workplace and discipline. The collective bargaining agreement between the claimant's union and the employer also states three disciplinary warnings in the twelve-month period will result in discharge.

On January 16, 2020, the claimant was "messing around" with his co-worker, a maintenance mechanic. (Claimant's Testimony.) At one point, the claimant held the dull side of a shaker table knife to his co-worker's neck. The co-worker reported the incident to management who determined the claimant had engaged in conduct that put his co-worker in danger of serious injury.

The claimant was discharged for violating the employer's safety and disciplinary policies. The claimant also had three disciplinary warnings in the prior twelve-months, but none that were related to conduct similar to the incident on January 16.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The employer has met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The employer has an interest in maintaining, and a legal duty to maintain, a safe work environment. The claimant's action of placing a knife against a co-worker's neck was a deliberate disregard of the employer's safety interests and a deliberate violation of the standards of behavior the employer has the right to expect of its employees. The claimant's conduct is disqualifying misconduct even without prior warning. Benefits are denied.

**DECISION:**

The February 10, 2020, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



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Stephanie R. Callahan  
Administrative Law Judge

March 6, 2020  
Decision Dated and Mailed

src/scn