

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVE E MCCUBBIN
Claimant

APPEAL NO. 14A-UI-11280-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOTTLING GROUP LLC
Employer

**OC: 09/21/14
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated October 21, 2014 (reference 01) which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on November 19, 2014. Claimant participated. Participating as a witness for the claimant was Ms. Josie Sampson. The employer participated by Mr. Thomas Kuiper, Hearing Representative, and witnesses Jeremy Larson, Delivery Supervisor; Steve Steck, Merchandiser; and Dean Wallace, Unit Manager. Claimant's Exhibits One through Four are received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Steve McCubbin was employed by Bottling Group, LLC from August, 2002 until September 24, 2014 when he was discharged from employment. Mr. McCubbin was employed as full-time merchandiser and was paid by the hour. His immediate supervisor was Jeremy Larson.

Mr. McCubbin was discharged on September 24, 2014 based upon an incident that had taken place at a Wal-Mart store the proceeding day on September 23, 2014. On that date, a fellow merchandiser, Steve Steck, complained to company management that Mr. McCubbin had argued publicly with him at a Wal-Mart facility, using profanity and threatening bodily harm.

The employer investigated and took statements from Mr. McCubbin, Mr. Steck, and contacted a representative at the Wal-Mart store about the matter. Mr. McCubbin agreed that he had directed profanity towards Mr. Steck and had raised his voice. Mr. McCubbin would neither admit nor deny the allegation that during the confrontation he had stated "If I ever see you on the street, I will shoot you." It was confirmed that the claimant's statements were disruptive and had caused a Wal-Mart manager to come to the area because of the disturbance.

Based upon the evidence that was available, the employer reasonably concluded that Mr. McCubbin had violated the company's policies that prohibit intimidating or threatening behavior. Based upon the gravity of the statements attributed to Mr. McCubbin, a decision was made to terminate him from his employment.

The controversy between Mr. McCubbin and Mr. Steck began with Mr. Steck reneged on a specific promise to give the claimant \$30 for filling in for Mr. Steck on a day that Mr. Steck did not want to work. That payment was to be in addition to the hourly wage that Mr. McCubbin would have received for working. After repeatedly requesting that Mr. Steck honor his agreement and Mr. Steck continuing to renege, Mr. McCubbin raised his voice and directed inappropriate language at his coworker.

It is the claimant's position that the situation was exacerbated by Mr. Steck lying to him about his intentions to pay Mr. McCubbin and the cavalier manner in which Mr. Steck refused to honor his previous written promise to pay. It is the claimant's further position that Mr. Steck had previously, intentionally interfered with his work at a different retail location by mixing up the work that Mr. McCubbin had already completed, and that Mr. McCubbin was intimidated by Mr. Steck's previous conduct when he had visited Mr. McCubbin's home uninvited with a number of other individuals. Mr. McCubbin had been experiencing a problem at the time with a neighbor who was related to Mr. Steck.

Although Mr. McCubbin initially denied making the statement attributed to him about potentially harming Mr. Steck, he later admitted to doing so; categorizing his statement as an isolated instance of poor judgment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the employer has sustained its burden of proof in establishing misconduct sufficient to warrant the denial of unemployment insurance benefits. They have.

Iowa Code § 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.

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).

In discharge cases, the employer bears the burden of proof in establishing disqualifying conduct on the part of a claimant. See Iowa Code Section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, the evidence establishes that Mr. McCubbin's conduct while working on September 23, 2014 was exacerbated by a previous, unsavory conduct of Mr. Steck, a coworker, and because Mr. Steck had blatantly reneged on a written promise to repay Mr. McCubbin an extra stipend of \$30 for working for Mr. Steck on a particular date.

Unfortunately Mr. McCubbin vented his dissatisfaction at Mr. Steck's unsavory behavior at a retail location, causing a disruption which included yelling and the use of profanities in violation of company policy. It is further unfortunate that Mr. McCubbin's conduct did not end with the yelling and the use of profanities but also included repeated threats to "shoot" Mr. Steck. Although Mr. McCubbin's may have been exacerbated by Mr. Steck's singularly bad behavior, Mr. McCubbin knew or should have known that the repeated threat of personal, bodily harm to Mr. Steck in the work location would be conduct subjective to immediate termination from employment; based not only on company policy but also common sense.

For the above-stated reasons, the administrative law judge concludes that the employer has sustained its burden of proof in showing the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and he is otherwise eligible.

DECISION:

The representative's decision dated October 24, 2014 (reference 01) is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

can/can