

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JOSEPH M NICHOLSON
Claimant

APPEAL NO. 19A-UI-02984-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BYRON ORIGINALS INC
Employer

OC: 03/10/19
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Joseph Nicholson (claimant) appealed a representative's April 1, 2019, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Byron Originals (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 29, 2019. The claimant participated personally. The employer was represented by Brian McKernan, Attorney at Law, and participated by Ritchie Hefner, Plant Manager; Ryan Godbersen, President; Bruce Godbersen, Chief Executive Officer; and Linda Lichtenberg, Administrative Assistant. Attorney Steve Bogue observed the hearing. The employer offered and Exhibits 1 and 2 were received into evidence. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on January 6, 2014, as a full-time director of sales and marketing. He signed for receipt of the Employee Relations Manual on January 6, 2014. The manual stated that an employee who engaged in direct physical contact, a violent act, will be subject to immediate termination.

The employer gave the claimant annual performance reviews. On December 5, 2016, the employer issued the claimant a written warning for absenteeism. The employer notified the claimant that further infractions could result in termination from employment.

On December 9, 2016, the claimant reported to human resources that the president shut the claimant's laptop on the claimant's fingers when reprimanding him. On August 15, 2018, a roll of carpet hit the claimant when he opened a pantry door in the break room. Employees were not properly closing the pantry doors and the claimant thought the CEO was playing a prank on employees because of this. He was unsure who caused the carpet to fall. On August 31, 2018,

the claimant told the employer that an employee was “hit by a broom in the closet that she said Bruce did it”. The employer considered the statement “slander”. The CEO talked to the claimant about his allegations concerning him. The CEO gave him a document and then took the document from the claimant. The CEO’s hands made contact with the claimant’s hands when he removed the document. The claimant continued to work for the employer.

On March 13, 2019, the president denied the claimant’s request for paid time off on March 15, 2019, because other employees had been given the time off before the claimant made his request. The claimant questioned the president about the denial and became upset. The president took the claimant to his father, the chief executive officer (CEO). The president and the claimant sat at a small table while the CEO sat at his desk in the CEO’s office. The claimant argued about why he should have time off on March 15, 2019, and questioned the paid time off policy. He became louder as he talked about past grievances for absenteeism. The president thought he would leave the room and get the claimant’s file across the hallway.

While he was out of the room, the president could hear the two men speaking in raised voices. The claimant had decided to speak loud enough for the whole office to hear the conversation. The claimant thought the CEO should answer the telephone so the claimant could have time off and said, “So you’re telling me you’re unwilling to answer the phone”. The CEO said it was in the interest of customers to have sales and marketing people answer the telephones. The president thought the conversation was getting too loud and confrontational. He decided to abandon his search for the claimant’s file and return to the room.

The president asked the claimant to please leave and go home. The company would pay him for the day and they could all talk about the situation later. The claimant slammed his hands on the table and said, “Hell no. I’m not leaving.” The president repeated his request for the claimant to leave. This time the president said that if the claimant did not leave, he would call the police. The claimant stood up quickly, moved to the president and chest bumped him. The claimant grabbed the door handle and threw it open. When the door hit the wall it made a huge noise. The president said, “Don’t do that again” (meaning the chest bump). The claimant chest bumped him again.

The president turned his body to the CEO and shrugged to indicate disbelief. While he was turned away, the claimant hit the president two or three times with a fist to the head. The president grabbed the claimant’s body in an attempt to restrain his arms. He was successful at grabbing only one arm. The claimant continued to hit the president with his free arm. The CEO joined the two to try to grab the claimant’s legs. The three men fell to the ground breaking the table. The CEO restrained the claimant’s legs. While the president was attempting to hold the claimant’s upper body, the claimant bit the president’s finger. During this process, the president was screaming and yelling for the plant manager and 911.

The plant manager arrived and repeatedly shouted at the claimant to calm down. He calmed and said, “Ryan, you fat fucker, get off me. I can’t breathe”. The men allowed the claimant to stand and the plant manager walked the claimant to the claimant’s office as the police and emergency vehicles arrived. The president said something about getting a decorative sword after the claimant was up and walking away.

The claimant was terminated on March 13, 2019, for violent conduct. The police escorted him off the premises. The claimant, the president, and the CEO were treated at the scene and at an off-site facility for injuries. The claimant was treated for scratches and abrasions. The president was treated for an upper lip laceration (four stitches), a human bite, and hematoma of the

head/concussion. The CEO was treated for an above the left eye laceration (five stitches), an above the right eye laceration (three stitches), and body bruising.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. He intentionally shoved, hit, and bit the employer after being told to leave the premises. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the employer's testimony to be more credible because it has provided numerous eye witnesses to the events for which the claimant was terminated. The claimant admits to throwing the first punch when he could have walked away.

DECISION:

The representative's April 1, 2019, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs