

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J BECKER
Claimant

APPEAL NO. 17A-UI-00928-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 01/01/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The University of Iowa (employer) appealed a representative's January 24, 2017, decision (reference 01) that concluded Michael Becker (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 16, 2017. The claimant did not provide a telephone number where he could be reached and, therefore, did not participate. The employer participated by Mary Eggenburg, Benefits Specialist, and Catherine Koebrick, Associate Director of Human Resources. The employer offered and Exhibit 1 was received into evidence. Exhibit D-1 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 June 23, 2014, as a full-time custodian one. He worked weekends at the music building with his wife. The claimant signed for receipt of the employer's Standards of Business Conduct on August 11, 2014. On July 11, 2014, the claimant completed training on the employer's sexual harassment policy. The employer issued the claimant warnings for attendance on November 23, 2015, January 8, 2016, and June 16, 2016. The warning indicated that further infractions could result in the claimant's termination from employment.

On September 14, 2016, the employer learned that law enforcement had been called to the claimant's residence for a domestic issue on September 14, 2016. The claimant's wife hit the claimant and a disturbance ensued with both spouses hitting each other. The claimant was charged by law enforcement with criminal acts. This was the first and only incident of its kind for the claimant. The employer placed the claimant on paid administrative leave and investigated.

On October 10, 2016, while on leave, the employer issued the claimant a written warning and five-day suspension for absences and not properly using sick leave. On December 1, 2016, the employer terminated the claimant for off duty/off site conduct. The claimant's wife was not terminated or issued a warning.

The claimant filed for unemployment insurance benefits with an effective date of January 1, 2017. The employer participated personally at the fact-finding interview on January 23, 2017, by Mary Eggenburg. She did not have firsthand knowledge of the events leading to the separation. The employer provided documents for the fact-finding interview. The employer did not identify the dates and particular circumstances that caused the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

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). Off premises during lunch hour,

claimant assaulted co-worker for alleged rumors spread by co-worker. Court of Appeals allowed benefits, noting lack of evidence of negative impact at work place plus fact that claimant finished the day before being discharged. *Diggs v. Employment Appeal Board*, 478 N.W.2d 432 (Iowa App. 1991). In the case at hand, the claimant was terminated for assaulting a co-worker after the co-worker assaulted him. A no contact order was issued and removed. The employer testified that the negative impact at work was having the two employees work together. It is understandable that the employer will not tolerate violence in the workplace. The employer is taking the rule a step further and will not tolerate violence anywhere at any time. The employer applied this work rule to one employee but not the other employee. Due to the disparate treatment of employees and lack of on-duty/on site conduct, the employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 24, 2017, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs