

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SENGTHON WANGKHAM

Claimant

APPEAL NO: 07A-UI-06783-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC

FRIGIDAIRE

Employer

**OC: 06/03/07 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sengthon Wangkham (claimant) appealed an unemployment insurance decision dated July 2, 2007, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Electrolux Home Products, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 30, 2007. The claimant participated in the hearing with his friend, Saythong Bounphanah and Beverly Dirckson, Judicial Advocate of the Mentally Ill in Hamilton County. The employer participated through Mallory Russell, Human Resources Generalist. Employer's Exhibits One through Seven were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

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 full-time on May 5, 1999 and was most recently working as a specialist or minster operator in the press department until he was discharged on June 7, 2007. He was discharged for making verbal threats of violence to certain co-employees on June 1, 2007. The claimant had not properly provided the forms needed to add his newborn daughter to his insurance plan so the insurance company was not paying the medical bills and the claimant was upset about this. On June 1 at approximately 7:35 p.m., the claimant mentioned the problem to a co-employee and said something about putting a bullet in someone's head. He stated that he would bring a gun to the plant and shoot certain employees, including LaVonne Russell, if she could not fix the problem. He added that he would then commit suicide. The claimant also claimed that he would kill some people at the facility and let the police shoot him so his family could collect life insurance money.

Around 10:00 p.m. that evening, the claimant was taken to the office for a disciplinary meeting regarding his attendance points. During that meeting, he threatened to shoot or kill supervisor Seth Beytien and Lavonne Russell, Labor Relations Manager. He was angry with Mr. Beytien because he claimed his supervisor approved him for vacation on May 25, 2007 and he was being written up for that absence. He also said he would go up and shoot Ms. Russell if she did not fix the insurance problem. As the claimant was leaving the meeting, he used his hand as a gun and pointed to Seth's door, while stating he would get that "fucking Seth." He went back to his work area and in front of the employee with whom he was previously talking, he used his fingers as a gun and said, "Boom, Boom!" The claimant said he would shoot the guy that wrote him up because he knew the claimant was on vacation. His co-employee reported his statements and the employer had someone observe the claimant until the end of his shift. He appeared to be acting normal and the employer did not want to exacerbate the situation so took no further action that night.

On approximately June 2, 2007 the claimant was taken into custody and placed under a mental health court order as it was alleged he was seriously and mentally impaired. He was given a psychological evaluation and was diagnosed with major depression with a single episode. Beverly Dirckson, Judicial Advocate of the Mentally Ill in Hamilton County, became involved with his case and the claimant later said to her that he realized he should not have made those statements. The claimant was released on June 7, 2007 after the civil commitment hearing based on the psychiatrist's recommendation that he continue with treatment on an out-patient basis. The claimant returned to work and was terminated on that same date under police presence.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for making explicit threats of violence to his co-employees on June 1, 2007. He now denies making any threats but the evidence does not support his testimony. The claimant was diagnosed with major depression and while it is acknowledged that he is dealing with mental health issues, there is no evidence to indicate that he was not aware of what he was saying when he made the threats. Threats of shooting someone with a gun must be taken seriously in today's society and the employer had no other option but to remove the claimant to protect its employees. The claimant's threats were a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 2, 2007, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs