

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON C THURMAN
Claimant

MIDWEST MECHANICAL INDUSTRIAL
Employer

APPEAL 16A-UI-09058-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/31/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 15, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 7, 2016. Claimant participated. Employer participated through office manager Lauren Roden.

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: Claimant was employed full-time as a laborer from May 4, 2015, and was separated from employment on July 11, 2016, when he was discharged.

On Saturday, July 9, 2016, the employer had a voluntary golf outing that employees could attend. The employer's customers, employees, and children of employees were at the golf outing. Claimant did not initially plan on going to the golf outing, but arrived around noon. Claimant decided to go because his sister and mother were having issues and he wanted to get away. Claimant wanted to blow off some steam with his coworkers. When claimant arrived at the golf outing, he sat at the bar and had a drink. Claimant was not acting like himself. Claimant was asked by a coworker if he had his handgun. Claimant stated yes and showed the coworker. Claimant also stated something to the effect that sometimes his family makes him want to off himself. The coworker requested the handgun from claimant, but he refused. The owner came and spoke to claimant and law enforcement was contacted. When the law enforcement officers arrived, claimant gave them his handgun. Claimant was then escorted out by the law enforcement officers. The employer was fearful for the safety of claimant, its customers, its employees, and the children.

Claimant spoke to the employer and was told to come to a meeting on Monday, July 11, 2016 at 7:30 a.m. On July 11, 2016, the employer told claimant he was separated from employment but it would consider bringing him back in thirty days if he had sought treatment. The employer

gave claimant different treatment facilities he could seek help at. The employer made it clear that claimant had been separated from employment. The employer also provided claimant insurance coverage through September 30, 2016 to allow him to seek treatment.

On July 28, 2016, claimant provided the employer a doctor's note that stated he could return to work with no restrictions. The doctor's note did not mention any treatment claimant had received and the employer elected not to bring him back.

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.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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 presented substantial and credible evidence that claimant threatened to harm himself at an employer event that was attended by the employer's customers, employees, and children. Claimant's argument that he was merely venting is not persuasive. Credible evidence was presented that claimant was not acting like himself and he had a handgun at the event when he made the comment about harming himself. Claimant testified he came to the golf outing because he was wanted to blow off some steam and he had to get away from the issues between his sister and mother. Furthermore, claimant testified he told a coworker something to the effect that sometimes his family makes him want to off himself. Claimant also refused to give his coworker his firearm.

The employer has a duty to protect the safety of its employees, customers, and children that were at the event. Claimant's threat of harm was contrary to the best interests of the employer and the safety of everyone at the event. This is misconduct even without prior warning.

DECISION:

The August 15, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs