

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL S RIDEN**  
Claimant

**APPEAL NO: 12A-UI-04286-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**OC: 03/04/12**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Fareway Stores, Inc. (employer) appealed a representative's April 16, 2012 decision (reference 01) that concluded Michael S. Riden (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 8, 2012. The claimant participated in the hearing. Theresa McLaughlin appeared on the employer's behalf and presented testimony from one witness, Todd Shill. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on July 18, 2011. He worked part time (10 – 20 hours per week) as a meat department clerk at the employer's Grinnell, Iowa store. His last day of work was March 5, 2012. The employer discharged him on March 6, 2012. The reason asserted for the discharge was that he had allegedly threatened another employee with physical violence contrary to the employer's interests and policies.

On March 5 the claimant was working when another employee came to his area. The claimant had previously observed that this employee seemed to be frequently scowling at the claimant. The claimant approached the other employee and indicated that he wanted to find out if there was a problem between them, and if so, to talk it out, and that if he had done something to

offend the employee, he apologized. After a brief discussion, the employee said there were no problems between them, and they went about their own business.

However, after speaking with the claimant the other employee reported to the employer that the claimant had threatened him, indicating that if the employee was “pissed with me” they could “go out to the parking lot right now” and settle matters, and that “if you want to roll, dog, we’ll roll.” The employer accepted this report from the employee as true. When the employer confronted the claimant, the claimant acknowledged that he had spoken with the employee and had sought to clear the air about a potential problem between them, which the employer took as the claimant agreeing that he has said everything that the employee had reported. Because of the conclusion that the claimant had made a threat of physical violence against the other employee, the employer discharged the claimant. In the claimant’s first hand testimony at the hearing, the claimant denied making any threats of physical violence or saying the things the employee had reported to the employer, but indicated that he had only had a calm discussion with the employee.

### **REASONING AND CONCLUSIONS OF LAW:**

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 § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant’s employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the allegation that he had made threats of physical violence against another employee. If true, this would be misconduct. To establish the truth of the assertion, the employer relies exclusively on the second-hand account from the other employee; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the employee is credible, or whether the employer’s witness might have misinterpreted or misunderstood aspects of the employee’s

report. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact made threats of physical violence against the other employee. The employer has not met its burden to show disqualifying misconduct. *Cosper, supra*. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's April 16, 2012 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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