

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DYLAN A MCCOMBS
Claimant

CROW AUTOMOTIVE SERVICES INC
Employer

APPEAL 21R-UI-20139-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/14/21
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant/appellant, Dylan McCombs, filed an appeal from the March 26, 2021, (reference 01) unemployment insurance decision that concluded he was not eligible for unemployment insurance benefits. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for June 24, 2021. A review of the Appeals Bureau's conference call system indicates that the appellant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the scheduled hearing. The employer followed the instructions on the hearing notice. The employer's representative was present and prepared to proceed with the hearing as scheduled. Because the claimant/appellant failed to follow the instructions on the notice of hearing, no hearing was held.

On September 6, 2021, the Employment Appeal Board remanded this matter for hearing. The parties were properly notified about the hearing. A telephone hearing was held on November 2, 2021. Claimant Dylan McCombs participated and testified. Employer participated through President, Randy Crow, and witness, Sarah Zaruber, dispatcher. Claimant's Exhibit A was offered and admitted. Official notice was taken of the administrative record.

ISSUE:

Was the claimant discharged from employment for disqualifying job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on February 17, 2020. Claimant last worked as a full-time tow truck operator. Claimant was separated from employment on February 10, 2021, when he was discharged for fighting. The video of the altercation was submitted by the claimant as evidence. (Claimant's Exhibit A). The claimant is the individual in the yellow jacket and the employer, Randy Crow, is the individual in the dark clothing. The claimant approached and chest bumped the employer numerous times during the altercation. The employer retreated from the claimant and the claimant continued to corner him in the employer's office. Ms. Zaruber is shown getting in between the claimant and the employer and the claimant's jacket comes off. The claimant's demeanor is aggressive and hostile and at no time does he leave or retreat from the altercation

that he initiated. The employer called the police and the claimant was handcuffed and taken to jail.

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.

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).

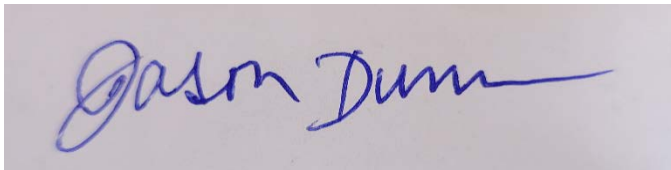
Where a claimant participated in a confrontation without attempt to retreat, the Iowa Court of Appeals rejected a self-defense argument stating that to establish such a defense the claimant must show freedom from fault in bringing on the encounter, a necessity to fight back, and an attempt to retreat unless there is no means of escape or that peril would increase by doing so. *Savage v. Emp't Appeal Bd.*, 529 N.W.2d 640 (Iowa Ct. App. 1995).

The claimant was the initial aggressor and made physical contact with the employer on more than one occasion. (*Id.*) The claimant's testimony was self-serving and inaccurate. The video clearly

shows the claimant acting as the initial aggressor and continuing that aggression for the majority of the video footage. (*Id.*) The claimant is much larger than the employer and the claimant's testimony that Ms. Zaruber "ripped" his jacket off does not comport with the video footage. (*Id.*) Ms. Zaruber places herself between her employer and the claimant and the claimant's jacket comes off as Ms. Zaruber is attempting to defend her employer. (*Id.*) The claimant initiated this confrontation and his continued assault coupled with his failure to retreat equates to disqualifying misconduct. Benefits are withheld until such time as he works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

DECISION:

The March 26, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for reasons related to job misconduct. Benefits are withheld until such time as he works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Jason Dunn
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December 2, 2021
Decision Dated and Mailed

jd/scn