

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONNA M PANGALLO**  
Claimant

**APPEAL NO. 09A-UI-02818-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PROGRESS INDUSTRIES**  
Employer

**OC: 01/18/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated February 12, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 28, 2009. Claimant participated personally and represented by law student Joseph Powell. Employer participated by Kelly Decker, Vice President Human Resources. Exhibit One, A and B were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 19, 2009.

Claimant was discharged on January 19, 2009 by employer because claimant allegedly threatened a resident on January 15, 2009. Claimant allegedly threatened to strangle a resident and kick her ass. Claimant did not make such threats. The resident complained to management. Statements were taken from the affected resident and from another resident who corroborated the incident. No staff members heard the alleged threats. Claimant had no warnings on her record for similar threats. Employer discharges pursuant to policy for threats to residents. Claimant was informed of this policy at the time of hire.

**REASONING AND CONCLUSIONS OF LAW:**

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant allegedly violated employer's policy concerning threats of violence toward a resident. Claimant was informed of this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant's in-person and sworn version is more credible than the hearsay offered by employer. Absent some sworn first hand testimony to the event employer cannot prove the policy violation by a preponderance of the evidence. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated February 12, 2009, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

---

Marlon Mormann  
Administrative Law Judge

---

Decision Dated and Mailed

mdm/pjs