

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK A RAY
Claimant

APPEAL NO. 07A-UI-08101-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCELENEY MOTORS INC
Employer

**OC: 07/29/07 R: 04
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Mark Ray filed an appeal from a representative's decision dated August 21, 2007, reference 01, which denied benefits based on his separation from McEleney Motors, Inc. After due notice was issued, a hearing was held by telephone on September 10, 2007. Mr. Ray participated personally. The employer participated by Terry Edwards, Service Manager, and Mark Chasey, General Manager.

ISSUE:

At issue in this matter is whether Mr. Ray was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Ray was employed by McEleney Motors, Inc. from September 24, 1990 until July 27, 2007. He worked full time in the detail center. He was discharged for repeatedly engaging in verbal altercations with coworkers and for threatening a coworker.

In approximately September of 2006, Mr. Ray received a verbal warning as a result of an argument between him and Rick Rogendorf. On November 28, he and Mr. Rogendorf both received written warnings as a result of an argument on that date. The two were arguing about whether the bay doors should be open or closed. Mr. Ray was told to bring problems to the attention of a manager rather than arguing. On July 26, 2007, Mr. Ray became involved in an argument with Ken England. Mr. England was talking on the telephone when it was time to return to work after lunch. Mr. Ray was the team leader and told Mr. England it was time to clock in and go to work. Mr. England became verbally abusive and the two began to argue. Mr. Ray did not approach a supervisor when Mr. England became verbally abusive. The argument was overheard by the service manager, who came and separated the two.

Mr. Ray received a warning on July 27 as a result of the argument on July 26. The employer did not intend to discharge him at that point. However, the employer learned from two workers

that Mr. Ray had made threats of physical harm against Mr. England because he felt Mr. England had gotten him into trouble with the employer. Based on the threats, Mr. Ray was discharged on July 27, 2007.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Part of the reason for Mr. Ray's discharge was the fact that engaged in arguments with coworkers. He had been warned verbally and in writing prior to the incident of July 26, 2007. Therefore, he knew that arguing with coworkers was contrary to the employer's expectations. He knew he was to contact a manager about problems rather than engaging in arguments. In spite of the warnings, Mr. Ray argued with Mr. England on July 26. He could have contacted a manager when Mr. England became verbally abusive and failed to return to work. Rather than contact a manager, Mr. Ray argued with Mr. England.

It is unreasonable to expect employees to be docile and well-mannered at all times. However, this was not an isolated event in Mr. Ray's employment history. Given the warnings he had received, he knew or should have known that continuing to have arguments with coworkers could result in his discharge. Mr. Ray was also discharged because he threatened a coworker. He was apparently angry because he felt Mr. England was responsible for him receiving the written warning on July 27. His conduct in threatening physical harm to Mr. England constituted a substantial disregard of the employer's interest in maintaining a violence-free workplace.

After considering all of the evidence, the administrative law judge concludes that substantial misconduct has been established by the evidence. Mr. Ray engaged in a course of conduct he knew to be contrary to the employer's interests and standards. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated August 21, 2007, reference 01, is hereby affirmed. Mr. Ray was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css