

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**GLEN M WINTERS**

Claimant

**W & G MARKETING CO INC**

Employer

**APPEAL 19A-UI-09301-CL**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/03/19**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On November 25, 2019, the claimant filed an appeal from the November 21, 2019, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A hearing was held in Des Moines, Iowa, on December 17, 2019. Claimant participated personally. Employer participated through vice president of operations Robert Olinger. Employer's Exhibits 1 through 4 were received. Claimant's Exhibit A was received.

**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 began working for employer on November 16, 2017. Claimant last worked as a full-time maintenance production worker. Claimant was separated from employment on October 31, 2019, when he was terminated.

Employer has a policy stating that disorderly conduct, assaulting anyone on Company property, or employee retaliation will result in termination. Claimant was aware of the policy.

On October 30, 2019, claimant suspected that a co-worker had stolen his coffee. He believed the same co-worker had previously put something in the coffeemaker to make his coffee taste bad and had intentionally knocked over some pallets. Claimant sent an email to the employee as follows:

So, you think you're a funny guy. I've been patient and put up with a lot up to now and I'm not in the habit of sending emails but I likely won't see your bearded face to say this in person. The games will stop. I know what you're doing and I know why you're doing it. Perhaps if you focus your energy on doing your job instead of pranking and trying to throw people under the bus you could do your job right for a change. Consider this your warning shot. Have a nice day.

The employee who received the email reported it to management the next morning. The employee reported feeling very concerned by the email with the violence going on in the workplace today.

On October 31, 2019, employer terminated claimant's employment.

Claimant had never been previously disciplined for similar conduct.

### **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, regardless of the source of the individual's wage credits:

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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct justifying termination of an employee and misconduct

warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 is not 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant was terminated after making a written threat to a co-worker. Claimant testified that he intended to warn his co-worker that he would complain to upper management if the pranks did not stop. However, the words "warning shot" could be interpreted by a reasonable person as a threat of gun violence. The co-worker did feel threatened by the statement, and in today's day and age, rightfully so.

With gun violence so prevalent in the workplace and schools today, any reasonable person knows there will be repercussions when making a statement such as the one made by claimant. Claimant testified that another employee who made a threat of violence was also terminated. The statement was in violation of employer's policy and employer has established a practice of terminating individuals for a first-offense violation of that policy. Claimant knew or should have known he would be terminated for making the statement. Employer established it terminated claimant for misconduct.

**DECISION:**

The November 21, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



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Christine A. Louis  
Administrative Law Judge  
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December 23, 2019  
Decision Dated and Mailed

cal/scn