

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACOB ADOR**  
Claimant

**APPEAL NO: 15A-UI-11332-JE**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SMITHFIELD FARMLAND CORP**  
Employer

**OC: 09/13/15**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 7, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Carroll, Iowa, before Administrative Law Judge Julie Elder on November 2, 2015. The claimant participated in the hearing with Interpreter “Aguék” from the interpreter service Language Link. Terry Vrieze, Assistant Human Resources Manager and Rodney Lewis, Assistant Kill Floor Manager, participated in the hearing on behalf of the employer. Employer’s Exhibits One through Three were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production worker for Smithfield Farmland from October 28, 2014 to August 27, 2015. He was discharged for verbally threatening a co-worker in violation of the employer’s policy.

On August 21, 2015, the claimant told co-worker Angier to quit talking to him and others or he would “beat the hell out of (her).” The claimant told Supervisor Rodney Lewis the week before that Angier was bothering him and others on the line. Mr. Lewis talked to Angier about her behavior, told her to stop, and then closely monitored her behavior. On August 21, 2015, Mr. Lewis approached the claimant in the afternoon because the claimant had asked to leave at 3:00 p.m. He explained the claimant could not leave right at 3:00 p.m. but could leave a few minutes later and the claimant stated Angier was bothering him and if Mr. Lewis did not do something about it he would “beat the hell out of her.” Mr. Lewis removed the claimant from the production line immediately and took him to human resources. The employer investigated the situation and Angier told the employer the claimant threatened to beat her. The claimant told the employer it had to talk to Angier and if she continued talking to him and bothering him he was going to “beat her up.”

On June 17, 2015, the claimant and co-worker Oscar Valladares had a confrontation after Mr. Valladares came over from a different line to help on the claimant's line which was short-handed. The claimant was critical of Mr. Valladares' work and eventually Mr. Valladares pointed the chisel he was holding at the claimant's chest. The claimant then pointed his chisel at Mr. Valladares' chest. The situation was diffused after it was reported to management and the parties were taken to the office for investigation into the incident. After the employer completed its review of the situation Mr. Valladares was disciplined and the claimant received a final written warning and was suspended without pay from June 17 through July 2, 2015 (Employer's Exhibit Two). The warning stated, "Any future incidents, similar in nature will result in termination. This incident is serious and this behavior is not tolerated. Neither employee shall retaliate against the other" (Employer's Exhibit Two).

After reviewing the August 21, 2015, incident the employer terminated the claimant's employment August 27, 2015, after determining his behavior violated its "Threats of Violence, Bullying and Intimidation" policy. That policy states, "All verbal and non-verbal threats of violent behavior in the workplace, whether involving or directed at an employee...are unacceptable and must be reported to your supervisor...immediately. Every report of violence or threat of violence will be investigated. Employees who engage in violence or threats of violence will be subject to disciplinary action, up to and including termination of employment..." (Employer's Exhibit One). The employee disciplinary notice listed, "Insubordination, failure to comply with established rules, policies, or procedures, or failure to follow instructions" and "Conduct or behavior that may be physically dangerous to employees and others (threatening, harassing, fighting, coercing, horseplay, etc.)" (Employer's Exhibit Three).

#### **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).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant told Angier, Mr. Lewis and Human Resources he was going to "beat the hell out of" Angier if she did not quit talking to him or if the employer did not talk to her about her behavior August 21, 2015. The employer had spoken to Angier about her behavior when the claimant complained about her to management one week prior to the final incident and then closely monitored her behavior after its conversation with her. The claimant did not complain about Angier to his supervisor or any other member of management again until August 21, 2015, at which time he first mentioned it to Mr. Lewis when he approached the claimant to let him know he could not leave work at exactly 3:00 p.m. as he had requested. Whether out of frustration over not being allowed to leave at 3:00 p.m. or because he was actually angry about Angier's behavior that day, the claimant verbally lashed out at Angier and then, after he presumably had time to cool down, repeated his threat to Mr. Lewis and then Human Resources.

The claimant received a final written warning and was suspended from June 17 through July 2, 2015, following threatening behavior between him and Mr. Valladares when both raised their chisels and pointed them at the chest of the other. While Mr. Valladares may have lifted his chisel and wielded it in a threatening manner first, the claimant engaged in the verbal argument with Mr. Valladares prior to both men raising their chisels and the claimant did not attempt to retreat from the argument and find a supervisor before it escalated into a potentially physically violent situation.

Because of the final written warning and suspension the claimant knew his job was in jeopardy. Despite that knowledge, however, he acted in a threatening manner toward Angier August 21, 2015, when he knew that if he engaged in that behavior again following the final written warning his employment would be terminated.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The October 7, 2015, reference 01, 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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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs