

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RAYMOND A HARTWIG
Claimant

ABRH LLC
Employer

APPEAL 15A-UI-01417-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/28/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 2, 2015, (reference 02) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on March 2, 2015. Claimant participated. Employer participated through general manager Joe Vandeventer and Thomas Kuiper of Equifax/Talx represented the employer. Employer's Exhibits 1 and 2 were received. Claimant did not follow the subpoena request process and the people requested as witnesses (those who wrote witness statements) were either no longer employed or not working at the time of the hearing. The employer did not receive the claimant's proposed exhibits (photos), but the content (stacks of dirty dishes) was not in dispute so the record was not left open for their sharing or admission.

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 was employed full-time as a cook and was separated from employment on December 30, 2014, when he was discharged. His last day of work was December 27, 2014. Another server/cook Edwin Henderson reported to Vandeventer that claimant had threatened to "kill the Mexicans," his fellow cooks saying "the lazy Mexicans did not do the dishes." Cooks are also responsible for dishwashing. Vandeventer went back to the dish area and found claimant taking pictures of stacks of dishes. Claimant again threatened to "kill" dishwashers Marcos and Losario in front of Vandeventer, who told claimant to calm down. He did not so. Vandeventer took him outside to the parking lot and asked him to leave. Claimant left the premises so Vandeventer did not call the police.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for 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).

While claimant disputes the employer's veracity, Vandeventer heard the statement made again after another employee reported it and other employees in the area also confirmed they heard claimant threaten harm to coworkers. Employers have an interest in protecting the safety of its employees. Thus, the employer has credibly established that claimant's threat of physical harm to coworkers was in violation of commonly known acceptable standards of work behavior and the employer's policy. This behavior was contrary to the best interests of employer and the safety of its employees and is disqualifying misconduct even without prior warning. Benefits are denied.

DECISION:

The February 2, 2015, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment for reasons related to job misconduct. Benefits are withheld until such time as the he works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs