

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID L HENDRIX
Claimant

MENARD INC
Employer

APPEAL 18A-UI-06374-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/13/18
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 30, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 28, 2018. Claimant participated. Employer participated through David Brooks, second assistant manager; Tom Groepper, General Manager and was represented by Paul Hammel, attorney at law. Employer's Exhibit 1 was admitted into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked full time in the receiving department beginning on April 27, 2017 through May 11, 2018 when he was suspended and then discharged. The claimant was in the garden center area of the store talking to two coworkers, Sue and Rebecca when he told them that the next day he was going to bring an AK-47 to work and shoot some of his coworkers. Both of his coworkers found the comment frightening and reported it to Mr. Brooks. The store was open when the claimant made the comments in an area where he could have been overheard by a customer. Mr. Brooks and the claimant's supervisor interviewed him and while at first the claimant denied making the comment; he eventually admitted that he had made the comment that he was going to shoot some employees. The claimant further provided that he was just joking and that he did not even own an AK-47. He was suspended while the store general manager consulted with the corporate human resources office and the legal department.

The claimant had been given a copy of the employer's handbook and policies which put employees on notice any threat of violence could result in disciplinary action up to and including discharge.

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 section 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 disqualification shall continue 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).

Unfortunately mass shootings or acts of workplace violence have become all too frequent. The news is filled with information about such events. Employer's must act to do all they can to stop such occurrences. In this climate the reasonable person knows, or should know, that joking about bringing an AK-47 to work and shooting coworkers is not funny or behavior that is allowed. Employer has an interest and duty in protecting the safety of all of its employees and customers. Claimant's threat to shoot some of his coworkers was in violation of specific work rules and against commonly known acceptable standards of work behavior. 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 May 30, 2018, (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs