

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

REX M RHOADS
Claimant

CG ACQUISITION CO
Employer

APPEAL 19A-UI-03912-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/24/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 8, 2019, (reference 04) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on June 6, 2019. Claimant participated personally and was represented by attorney Steven A. Weidner. Employer chose not to participate.

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 in July 2018. Claimant last worked as a full-time manufacturing associate. Claimant was separated from employment on April 15, 2019, when he was terminated.

Claimant had difficulties getting along with his co-workers. Employer coached claimant on the issue eight times between December 2018 and February 2019.

During the last month of his employment, employer suspended claimant because he was having issues getting along with his lead worker. At that point, claimant understood his job was in jeopardy due to his interpersonal behaviors.

On April 10, 2019, claimant's co-worker, Shawn, threatened to physically assault him after a disagreement about work duties. Claimant reported the threat to his supervisor. The supervisor separated the two employees and claimant had no further problems with Shawn. Soon thereafter, a quality assurance employee named Tiffany began criticizing claimant's work. Claimant believed Tiffany was attempting to antagonize him on Shawn's behalf. Claimant was frustrated and made the comment that he should "burn the place to the ground." Two temporary employees who did not know claimant overheard the comment.

The next day, employer suspended claimant without pay while it investigated allegations made against him.

On April 15, 2019, human resource employee, Bailey, called claimant and asked him if he stated he should burn the place to the ground. Claimant admitted to making the comment, but stated that he was only joking. Bailey terminated claimant during the same phone call.

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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, 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). What constitutes

misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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 does not constitute 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 for making a threat in the workplace after being warned numerous times about getting along with his co-workers. Claimant asserts that his threat to burn down the workplace was in jest. Any reasonable person in today's day and age sees the prevalence of workplace violence in the news and knows that making a threat of harm in the workplace is not funny to anyone and will likely result in termination.

Employer terminated claimant for job-related misconduct.

DECISION:

The May 8, 2019, (reference 04) 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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Decision Dated and Mailed

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