

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**ARLAN R THOMPSON  
1240 SHANNON DR  
IOWA CITY IA 52246**

**NATIONAL TELECOMMUTING  
INSTITUTE INC  
1505 COMMONWEALTH AVE  
BRIGHTON MA 02135**

**Appeal Number: 04A-UI-12763-RT  
OC: 10-31-04 R: 03  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Arlan R. Thompson, filed a timely appeal from an unemployment insurance decision dated November 19, 2004 reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on December 21, 2004, with the claimant participating. Joseph Bousquet, Director of Recruiting, participated in the hearing for the employer, National Telecommuting Institute, Inc. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

On December 6, 2004, Linda Gardner called the Appeals Section and left a message for the administrative law judge to call her. The administrative law judge called Ms. Gardner at 11:54 a.m. on December 9, 2004 and spoke to her. Ms. Gardner requested that the hearing be rescheduled because she would be on vacation. The administrative law judge asked if there

would be anyone else that could handle the hearing. Ms. Gardner said that there was, Joseph Bousquet, Director of Recruiting. The administrative law judge then denied the employer's request for rescheduling. Mr. Bousquet participated in the hearing.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time customer service representative (CSR) from December 15, 2003 until he was discharged on October 19, 2004. The claimant was discharged for inappropriately touching a supervisor in anger on or about October 15, 2004. On or about October 15, 2004, the claimant was upset with his supervisor, Ed. He was upset because he had received an e-mail on October 13, 2004, indicating that he had clocked out early one minute and he was going to have his time reduced by 1/10 of an hour. He returned the e-mail indicating that was unacceptable. He then pursued the matter and was told to speak to his supervisor, Ed. The claimant then sent an e-mail to him but did not hear from him on October 14, 2004. At that time he asked his supervisor if he had received the claimant's e-mail and the supervisor said yes, he was still working on it. When the claimant had not heard from his supervisor on October 15, 2004, he confronted his supervisor, Ed, who told him that because of the abuse by the employees of the time clock, he was still going to have to be reduced 1/10 of an hour. The claimant became upset and angry and placed his right hand on the chest of his supervisor. The claimant did not know what he did with his left hand, but it appears that the claimant made some kind of threatening gesture towards the neck of his supervisor. The claimant was attempting to try to get his supervisor to stop and listen to him. The claimant knew this was wrong and when he cooled down, he apologized. The claimant had received no warnings or disciplines for such behavior, but the claimant had a propensity to become very frustrated when things did not go his way. The claimant was offered another position with the employer similar to the one he had, but allowing him to work at home, but the claimant has not yet returned the papers on that position. The claimant had a stroke, which sometimes effects his emotions.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

Iowa Code Section 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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties agree, and the administrative law judge concludes, that the claimant was discharged on October 19, 2004, although they disagree as to technically who discharged the claimant. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for misconduct. The evidence establishes by a preponderance of the evidence that on or about October 15, 2004, when the claimant was angry and upset with his supervisor, Ed, the claimant placed his hand on the supervisor's chest and made a threatening gesture with his left hand towards the throat of his supervisor. The claimant admits only to placing his right hand on the chest of the supervisor, but the evidence indicates that there was also a threatening gesture made to the throat of the supervisor. The claimant was upset and angry because his time was going to be reduced by 1/10 of an hour. The claimant knew this behavior was wrong and later apologized. The administrative law judge does not believe that there is any excuse for physically touching a supervisor, or any coworker, in an angry fashion or making threatening gestures towards a supervisor or coworker. The administrative law judge is not unmindful of the serious problem with workplace violence. There is no place in the workplace for any displays of such violence. The fact that the claimant was upset is no excuse. The fact that the claimant apologized is no excuse. The fact that the claimant may have had a stroke that affected his emotions is no excuse. One must control his physical actions and not touch or threaten other coworkers. Even the claimant conceded he knew it was wrong. When the claimant did so, it was a deliberate act constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evinced a willful or wanton disregard of an employer's interest and was disqualifying misconduct. The evidence indicates that the claimant occasionally became frustrated and agitated; but up to that point, had not taken any physical actions. The claimant had received no warnings or disciplines for this behavior, but the administrative law judge does not believe that any such warnings or disciplines are necessary to inform someone that he cannot physically, in an angry or upset manner, threaten or touch a coworker or supervisor. The claimant was offered a position at home, which apparently he has refused, because he has not yet sent the paperwork necessary to allow him to work at home. This position would allow him to perform the same work he had been doing but do it at home. This seems like a good alternative but the claimant has not taken

advantage of that opportunity. It is true that the employer's witness, Joseph Bousquet, Director of Recruiting, was confused as to the date of the incident and the sex of the supervisor, but the administrative law judge notes that the witness with the firsthand information had requested a continuance, which the administrative law judge denied because other witnesses were available. Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant's actions were disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

**DECISION:**

The representative's decision dated November 19, 2004, reference 01, is affirmed. The claimant, Arlan R. Thompson, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits, because he was discharged for disqualifying misconduct.

b/b