

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE R BINNS**  
Claimant

**APPEAL NO: 12A-UI-06256-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ROSE ACRE FARMS**  
Employer

**OC: 05/06/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Rose Acre Farms (employer) appealed a representative's May 22, 2012 decision (reference 01) that concluded Michelle R. Binns (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 20, 2012. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Tami Ryerson appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on March 12, 2009. She worked full-time as a night sanitation worker at the employer's Winterset, Iowa, egg processing facility. Her last day of work was April 28, 2012. The employer discharged her on April 30, 2012. The reason asserted for the discharge was making a threat of violence against a coworker.

On the shift on the night of April 9, 2012, the claimant was speaking in the vicinity of two coworkers and a supervisor, commenting that she "wanted to kill 'somebody.'" The supervisor asked who the claimant wanted to "kill." The claimant responded by naming a third coworker, and then said, "I want a knife, I want to kill her." The two coworkers wrote up statements on April 10 and gave them to another supervisor. The supervisor who had witnessed the matter did not make a written statement until April 27, but made a verbal report to the other supervisor on or about April 10. The supervisor who received the reports did not do anything with them

until about April 27, when she provided the information to the human resources manager, Ryerson. Nothing had been said to the claimant as to there being any ongoing inquiry or pending action. There had not been any further incident involving the claimant after April 9; when she was questioned on about April 27, she acknowledged she had made the statements as alleged, but then realized they were inappropriate, and had taken steps to avoid further contact with the coworker with whom she was upset.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her threatening remarks on the night of April 9. While this conduct was inappropriate, there is no current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988). The incident in question occurred over two weeks before the claimant was even questioned about the incident, and the employer's management was immediately on notice of the incident because of the involvement of the supervisor. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's May 22, 2012 decision (reference 01) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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