

**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**

**GREGORY CLUNEY  
112 SOUTH ADAMS  
BURLINGTON IA 52601**

**DALARNA FARMS  
2397 – 240<sup>TH</sup> ST  
NEW LONDON IA 52645**

**Appeal Number: 05A-UI-06674-ET  
OC: 06-05-05 R: 04  
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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 23, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 14, 2005. The claimant participated in the hearing. Steve Carlson, DVM/Owner/Manager; Robin Carlson DVM/CFO; Tarrant French, Herdsman; and Paula DeBrackeleire, Herdsman/Breeder; participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time feeder for Dalarna Farms from March 31, 2004 to June 6,

2005. During the week of May 28 and June 5, 2005, the employer was out of town. He received a call that the claimant had failed to show up for work May 31, 2005, after initialing calling to state he would be late and consequently the employer directed Tarrant French, Head Herdsman, to suspend the claimant until he returned and could discuss the situation with the claimant. On June 6, 2005, the employer met with the claimant about the incident and both parties became loud and used profanity, but the claimant apparently took to another level, became very "belligerent" and said "just fire me" several times until the employer decided to accept his offer and terminated his employment. Around 7:00 a.m. that morning, the claimant's ride dropped him off and as he got out of the car he told Louis Krogmeier, Facilities Manager, he was "lucky" the claimant was not driving or he would have run him over. Shortly after that, the claimant called Mr. French a "lying motherfucker" and said he was "going to kick (his) ass" for saying he was not there May 31, 2005. The claimant then proceeded to call him a "pussy" and Mr. French went over by the office and the claimant yelled, "You're dead. I'm going to kill you" and then flipped him off. The claimant had received previous verbal warnings but had not received a written warning during his employment. There had been other incidents, but the employer made the decision to terminate the claimant's employment based on his actions during the meeting June 6, 2005.

#### 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:

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 employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant failed to report for work May 31, 2005, after calling to say he would be late. Mr. French reported the situation to the employer when he called in and when the employer returned June 6, 2005, the claimant not only responded inappropriately and disrespectfully to the employer and said, "Just fire me" several times. He also made threatening, inappropriate and unprofessional remarks to Mr. French and Mr. Krogmeier. The claimant's actions were not an isolated incident and his conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The June 23, 2005, reference 01, 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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