

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL REED
Claimant

APPEAL NO: 12A-UI-02590-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BARLETT INTERNATIONAL INC
BARTLETT GRAIN CO**
Employer

OC: 01/22/12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Michael Reed (claimant) appealed an unemployment insurance decision dated March 5, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Bartlett International, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 11, 2012. The claimant participated in the hearing. The employer participated through Simon "Chip" Buckner, corporate counsel, and Darwin Samuelson, superintendent. Employer's Exhibits One through Five were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as full-time general laborer/head maintenance from February 27, 2006 through January 20, 2012. The employer's conduct policies prohibit employees from engaging in criminal conduct or acts of violence, fighting, horseplay and provoking a fight on company property. The claimant was discharged for assaulting a co-employee while working.

The claimant, Chris Mattox, and Jerry Sime were unloading the dust truck when Dustin Jager arrived to help. Mr. Jager reported the claimant told him to "get the fuck out, we don't need your help" and then said, "go back to sucking dick!" The claimant's written statement reported that he said, "We got it, go back to sucking Chris' dick." Mr. Jager said he was there to help with the dust truck. After they were done, Mr. Jager said he was going back to finish maintenance and walked out. The claimant threw down his shovel and ran after Mr. Jager. Chris Mattox reported the claimant said, "Say something else mother fucker," and Jerry Sime said the claimant said,

“You wanna keep talking shit?” All three witnesses said the claimant used both hands to punch Mr. Jager in the face or head. The claimant said he used both hands and “palmed him” in the bill of his hard hat. At the hearing, the claimant admitted he hit Mr. Jager because Mr. Jager liked to agitate others a lot.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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.

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on January 20, 2012 for assaulting a co-employee in the workplace. The employer has an interest and duty in protecting the safety of all of its employees. The claimant's physical aggression 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 the employer and the safety of its employees and is disqualifying misconduct even without a prior warning. Benefits are denied.

DECISION:

The unemployment insurance decision dated March 5, 2012, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw