

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**EDWARD NEWSOM**  
Claimant

**ALTER TRADING CORPORATION**  
Employer

**APPEAL 19R-UI-07778-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/21/19  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On August 26, 2019, Edward Newsom (claimant) filed an appeal from the August 22, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination Alter Trading Corporation (employer) discharged him for fighting on the job. The parties were properly notified about the hearing. A telephone hearing was scheduled for September 19, 2019. The claimant did not register a phone number before the record closed and a default decision was issued. The claimant appealed the decision to the Employment Appeal Board (EAB) who remanded the case to the Appeals Bureau for another hearing.

Notices of the new hearing scheduled for October 24, 2019 were mailed to the parties' last known addresses of record. The claimant participated personally. The employer participated through Assistant Facility Manager Joe Nardoni and Regional Human Resource Manager Sue Myers and was represented by Tim Speir. The Employer's Exhibits 1 through 4 and the Department's Exhibit D1 were admitted without objection.

**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: The claimant was employed full-time as a Sorter beginning on September 24, 2018, and was separated from employment on July 23, 2019, when he was discharged. The employer has a workplace violence policy that states any violence at work will result in termination of employment. The claimant signed off on the policy when he was hired.

On July 17, 2019, Mark Anderson, the claimant's co-worker, was working in a sorting room. The claimant was assigned to the shaker, approximately 75 feet away from the sorting room and on a different level. The claimant had heard Anderson was making disparaging comments about his break times. He went to report Anderson's statements to then Supervisor Joe Nardoni in the office.

While walking to the office, the claimant decided instead of telling Nardoni that he would confront Anderson directly about his statements. The claimant entered the sorting room through

the only door. He confronted Anderson about his comments. Anderson responded by verbally threatening the claimant. The claimant did not leave the room, even though he was standing closest to the door. Instead, he grabbed Anderson by the arm and shirt collar pushing Anderson into the wall. The two then engaged in a physical altercation.

After the two employees were separated, Anderson reported the issue to Nardoni who suspended both employees pending investigation. Regional Human Resource Manager Sue Myers conducted an investigation by interviewing employees and watching video of the altercation. She determined both employees had been active participants in workplace violence. The claimant and Anderson were both discharged as a result of the July 17 incident.

### **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. Benefits are denied.

Iowa Code section 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 disqualification shall continue 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 of proof in establishing disqualifying job misconduct. *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). 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). 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).

The claimant has argued that he was engaged in self-defense when he responded physically to the comments being made by Anderson. However, where a claimant participated in a confrontation without attempt to retreat, the Iowa Court of Appeals rejected a self-defense argument stating that to establish such a defense the claimant must show freedom from fault in bringing on the encounter, a necessity to fight back, and an attempt to retreat unless there is no means of escape or that peril would increase by doing so. *Savage v. Emp't Appeal Bd.*, 529 N.W.2d 640 (Iowa Ct. App. 1995). In this case, the claimant was standing closest to the only door in the room and had an opportunity to leave rather than use physical force after Anderson made verbal threats. Therefore, the claimant cannot establish self-defense.

Employers generally have an interest in protecting the safety of all of its employees and invitees. The claimant's response to Anderson's threat of physical aggression by engaging him rather than exiting through the door and reporting the threat of assault to a supervisor was in violation of specific work rules and against commonly known acceptable standards of work behavior. Additionally, the claimant has not established disparate treatment under the employer's policy as both he and Anderson were discharged for their roles in the July 17 incident. The claimant's behavior was contrary to the best interests of employer and the safety of its employees and invitees, and is disqualifying misconduct even without prior warning. Benefits are denied.

**DECISION:**

The August 22, 2019, reference 01, 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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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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