

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRADEY M TELSCHOW**  
Claimant

**NOVAE CORP**  
Employer

**APPEAL 18A-UI-11635-AW-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/11/18**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2) – Discharge for Misconduct  
Iowa Admin r. 871-24.32 – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Bradey Telschow, Claimant, filed an appeal from the November 28, 2018 (reference 01) unemployment insurance decision that denied benefits because he was discharged from work with Novae Corp. due to fighting on the job. The parties were properly notified of the hearing. A telephone hearing was held on December 18, 2018 at 9:00 a.m. Claimant participated. Employer did not participate. No exhibits were admitted.

**ISSUE:**

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.

**FINDINGS OF FACT:**

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant's employment with Novae Corp. began when Novae Corp. purchased the company claimant was working for in January 2016. Claimant most recently worked full-time with Novae Corp. as a material handler; claimant's employment with Novae Corp. ended on November 11, 2018.

On November 9, 2018, claimant's coworker threw an ice ball at claimant which struck claimant in the face. Claimant was on a forklift when this occurred. Claimant got off of his forklift, approached his coworker, grabbed him by his coat collar and told him to stop. Claimant then left the area, reported the incident to his supervisor and returned to work. On November 11, 2018, claimant was discharged from employment for assault.

Employer has a policy against fighting. The policy is located in the employee handbook. Claimant received a copy of the handbook. The handbook also states that fighting could lead to discipline up to termination. The handbook does not define fighting or assault. Claimant had no prior warnings for fighting, assault or other misconduct.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

An employee should avoid the use of force when involved in an altercation at the workplace and has a duty to retreat if provided with a reasonable opportunity. 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). 6A C.J.S. Assault & Battery § 19, at 343-44 (1975).

Employers generally have an interest in protecting the safety of all of its employees and invitees. Claimant's response to his coworker's act of physical aggression was to get off of the forklift, approach his coworker and grab him by his coat collar. This was a threat of physical aggression by claimant toward his coworker. Claimant was not acting in self-defense, because there was no necessity to fight back. Claimant could have left the area immediately. By engaging his coworker rather than immediately leaving the area and reporting the horseplay or threat of assault to a supervisor, claimant violated specific work rules and acted against commonly known acceptable standards of work behavior. 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 November 28, 2018 (reference 01) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount.

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Adrienne C. Williamson  
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Decision Dated and Mailed

acw/rvs