

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**Kaden Morgan**  
Claimant

**DIA APPEAL NO. 22IWDU0022  
IWD APPEAL NO. 21A-UI-17802**

**Iowa Department of Transportation**  
Employer

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 4/04/2021  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Claimant, Kaden Morgan, filed an appeal from the August 3, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination he had been discharged "for conduct not in the best interest of your employer." After proper notice, a telephone hearing commenced on September 30, 2021. Claimant appeared and testified. Frankie Patterson from Corporate Cost Control represented DOT. DOT witnesses Claude Frazier and Dana McKenna testified at the hearing.

**ISSUE(S):**

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Appellant Kaden Morgan started working of the Iowa Department of Transportation as a highway tech associate on February 19, 2021. His supervisor was Claude Frazier. Prior to actually starting work, Morgan had signed a DOT work rules policy document that, among other things prohibited threatening to inflict bodily harm and making intimidating statements or behavior. He had also signed off on the State of Iowa Employee manual that included a portion on the Iowa Violence Free Workplace policy. Pursuant to State of Iowa Policy, Frazier was to be a probationary employee for six months, meaning he was essentially an at-will employee.

On or about March 29, 2021, one of Morgan's coworkers informed Frazier of an apparent incident that had occurred between Morgan and another coworker on March 15, 2021, which he believed needed to be looked into. After speaking to his supervisor, Bob Ellis, the two of them undertook an investigation of the incident. They first spoke to four separate employees who would have been in the vicinity of the alleged incident. None of those four persons heard exactly what was said, but they did see an interaction between Morgan and another coworker, and they did recall the tone of that conversation and other context. One person, based on his opinion that Morgan's tone was "not a joke", was moved to ask Morgan what he had been saying. Frazier also spoke

to the person who Morgan's actions apparently had been directed to. That person make the following written statement:

[Morgan told me to] shut the fuck up or I will snap your neck . . . . He repeatedly threatened to physically assault a co-worker. The manner in which he made the statements did not seem to be a joke. I do believe [Morgan] would act on some of these threats that he has made. The way he speaks about his managers and to coworkers is completely unprofessional.

In Frazier's estimation, the person who wrote the statement has a history of honesty and he has no reason to disbelieve that person. He also considered Morgan's behavior to constituted "very serious misconduct." Likewise, DOT Employee Relations Team Lead Dana McKenna, believed it to be an "extremely significant" event because DOT does not tolerate any threats of violence to anybody.

Based on the findings of this investigation, in particular that he had violated various work rules, DOT made the decision to terminate Morgan. Although his superiors made the ultimate decision to terminate, Frazier informed Morgan of the termination in a private meeting in his office on April 2, 2021. Pursuant to DOT HR policy, Frazier was not allowed to inform Morgan of the reason for his termination because it happened during his probationary period.

Following the termination, the person to whom Morgan's alleged threats were made contacted Frazier because Morgan had attempted to contact him or her a couple times. This was concerning to this person.

At this hearing, Morgan denied the incident totally, claiming he was totally surprised when he was informed of the termination. He admitted that he signed the handbooks prohibiting all threats. Even though nobody from DOT has ever told him why he was fired or who made allegations against him, he says he believes he knows who made them. According to Morgan, he believed that he had a good relationship with this person and he knows of no reason why this person would make up any allegations against him.

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

For the reasons that follow, the administrative law judge concludes the IWD representative's decision of August 3, 2021, is correct. Claimant was discharged for misconduct. Claimant was thus discharged from employment for a disqualifying reason.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits . . .

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. . . .
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.

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).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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).

What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal*


*Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000)(fact that claimant, who was a snowplower, had two accidents involving utility lines within three days did not constitute misconduct such as would disqualify claimant from receiving unemployment benefits; there was no evidence that claimant intentionally or deliberately damaged utility lines or violated any traffic laws, and there was uncontroverted evidence that accidents were beyond claimant's control).

I conclude that the Employer has met its burden to establish that Claimant was terminated for misconduct. Claude Frazier received troubling reports of threatened violence in the workplace. He and his supervisor undertook an investigation and determined them to be true. The allegations were confirmed directly in written form by the person to whom the threats were directed. Frazier knows that this person has a reputation for honesty and can think of no reason why he or she would have made up this allegation. Likewise, even Morgan, who believed he knew who had made the allegations, claimed that he had a good relationship with this person. I find the statement from the person to be more credible than Morgan's denial. The reporting party had a reputation for honesty with his supervisor and other coworkers observed an interaction between them that seemed concerning. These threats were quite serious and an obvious violation of workplace rules. Threats of violence in the workplace cannot be tolerated and deserve a strong response.

For all of these reasons, I conclude Frazier was terminated based on disqualifying misconduct here. IWD's decision to this effect must be AFFIRMED.

**DECISION:**

The August 3, 2021 (reference 01) unemployment insurance decision is AFFIRMED (found to be correct). Claimant is not eligible to receive benefits.



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David Lindgren  
Administrative Law Judge

10/1/2021

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Decision Dated and Mailed

Cc: Kaden Morgan, Claimant (By first class mail)  
IDOT (By first class mail)  
Karen Holett, IWD (By email)  
Joni Benson, IWD (AEDMS)

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). You will need to apply for PUA to determine your eligibility. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

**Case Title:** MORGAN V. IA DEPT OF TRANSPORTATION

**Case Number:** 22IWDUI0022

**Type:** Proposed Decision

IT IS SO ORDERED.

A handwritten signature in black ink that reads "David Lindgren". The signature is written in a cursive, flowing style.

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David Lindgren, Administrative Law Judge