

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GARY L BEHREND**  
Claimant

**APPEAL NO. 07A-UI-09856-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GMT CORPORATION**  
Employer

**OC: 09/16/07 R: 03  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Gary Behrends, filed an appeal from a decision dated October 23, 2007, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 6, 2007. The claimant participated on his own behalf and with a witness Sonny Bullock. The employer, GMT Corporation, participated by Human Resources Manager Kendell Kelly, Supervisor John Barnish, and Quality Assurance Manager Frank Linarz.

**ISSUE:**

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

**FINDINGS OF FACT:**

Gary Behrends was employed by GMT from August 14, 2006 until September 18, 2007, as a full-time machine operator. On September 4, 2007, Human Resources Manager Kendell Kelly and Supervisor John Barnish met with the claimant regarding an incident the prior week. Mr. Barnish had issued a write up to the claimant and Mr. Behrends became obstreperous and defensive, then declaring he was “giving [his] notice” and would be looking for another job.

Over the Labor Day weekend, after the meeting had already been scheduled for September 4, 2007, the claimant called Mr. Barnish at his home and apologized, stating he knew he had been “out of line” and it “would not happen again.” At the meeting, the employer had intended to discharge him for the incident but rescinded that decision in light of the apology, but the claimant was notified if there were any further incidents of a similar nature, he would face discharge.

On September 18, 2007, the claimant left his workstation to go out into the parking lot to roll up the windows in his car. When he came back in, Mr. Barnish asked him where he had been and the claimant asked him, “Why do you want to know?” The supervisor just said there was a lot of work to do and the claimant needed to be at his workstation. Mr. Behrends again became loud

and defensive, asking over and over if he was going to be fired. The supervisor told him he should go home and the claimant refused unless he was told directly he was fired.

The supervisor went back to his office and the claimant continued to be very loud, exclaiming several times to "fire me!" Finally, Mr. Barnish summoned him into the office and told him again to go home, and again the claimant refused unless he was told he was fired. The supervisor called his supervisor, who reinforced the order to go home. The claimant left after declaring he would not go home but intended to go to Waverly, Iowa, to see Human Resources Manager Kendell Kelly.

At the meeting with Mr. Kelly, the claimant denied any and all wrongdoing, claiming he had not been loud or insubordinate. He was told the human resources manager would "look into it" and was sent home, and this time he went. Mr. Kelly talked with Mr. Barnish and Quality Assurance Manager Frank Linarz, who had been present at the time of the incident. Both individuals confirmed the claimant had been loud and disruptive, raising his voice, demanding to be fired, and refusing to either return to work or go home.

Mr. Kelly concluded the investigation and the decision was made to discharge Mr. Behrends for this incident as well as the one regarding which he had been warned two weeks earlier.

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

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 claimant maintains he did not act in any disrespectful, disruptive, or insubordinate manner, but the testimony does not support this contention. He has acknowledged acting in just such a manner two weeks prior, for which he was counseled and warned his job was in jeopardy. Whatever his personality conflict was with the supervisor, it does not justify his unacceptable conduct in the workplace. This is conduct not in the best interests of the employer and the claimant is disqualified.

**DECISION:**

The representative's decision of October 23, 2007, reference 02, is affirmed. Gary Behrends is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw