

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NYEGUAR D RUEY
Claimant

APPEAL NO. 13A-UI-04058-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARSDEN BLDG MAINTENANCE LLC
Employer

OC: 03/03/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Nyeguar Ruey filed a timely appeal from the March 22, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was started on June 25, 2013 and concluded on August 5, 2013. Ms. Ruey participated on both dates, but prematurely terminated her participation in the hearing on August 5, 2013. Jenna Clark of Equifax Workforce Solutions represented the employer and presented testimony through Rebecca Dyke and Jeff Allen. Nuer-English interpreter Joseph Malual assisted with the hearing. Exhibit One was received into the record.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a commercial cleaning enterprise. Nyeguar Ruey was employed by Marsden Building Maintenance, L.L.C., as a part-time general cleaner from 2010 until March 6, 2013, when the employer discharged her for violence in the workplace. On March 4, Ms. Ruey was angry with a coworker and pushed the coworker. A coworker had to step in between Ms. Ruey and coworker to prevent Ms. Ruey from further aggression. In connection with the same incident, Ms. Ruey refused a directive from supervisor to go clean in a different area. In connection with the same incident, Ms. Ruey placed her finger on the supervisor's nose in an aggressive manner, forcing the supervisor to back away from the contact. In making the decision to discharge Ms. Ruey from the employment, the employer considered additional prior concerns.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Threats of violence in the workplace constitute misconduct that disqualifies a claimant for benefits. The employer need not wait until the employee acts upon the threat. See Henecke v. Iowa Dept. Of Job Services, 533 N.W.2d 573 (Iowa App. 1995). An employee who engages in a physical altercation in the workplace, regardless of whether the employee struck the first blow, engages in misconduct where the employee's actions are not in self-defense or the employee failed to retreat from the physical altercation. See Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995).

The evidence in the record establishes that Ms. Ruey engaged in violent and otherwise aggressive conduct directed toward a coworker and a supervisor. None of the conduct was in self-defense. The conduct was in willful and wanton disregard of the employer's interest in

maintaining a safe and civil workplace. Ms. Ruey was discharged for misconduct. Accordingly, Ms. Ruey is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The Agency representative's March 22, 2013, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs