

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE DONOHUE
Claimant

APPEAL NO. 13A-UI-02747-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCDONALDS
Employer

OC: 01/27/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the representative's decision dated March 1, 2013, reference 01, which held that that the claimant was not eligible for unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on April 3, 2013. The claimant participated personally. The employer participated by Larry Freyburger, store manager. The record consists of the testimony of Larry Freyburger and the testimony of Kyle Donahue.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The employer is a McDonalds restaurant located in Marshalltown, Iowa. The claimant was hired on June 6, 2007, as a full-time crew person. One of his jobs was to help unload the truck. The claimant's last day of work was January 31, 2013. He was terminated on January 31, 2013, for threatening to kill another employee.

The incident that led to the claimant's termination occurred on January 31, 2013. The claimant was helping another employee unload the truck. The other employee asked the claimant what he would do if the employee hit him. The claimant responded that he would kill him.

The employee had been disciplined in the past for abusive language and behavior towards other employees. He had thirteen warnings and two suspensions.

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.

Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Profanity or other offensive language in a confrontational or disrespectful context may constitute misconduct, even in isolated situations or in situations in which the target of the statements is not present to hear them. See Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990). In Henecke v. IDJS, 533 N.W.2d 573 (Iowa App. 1995), the Iowa Court of Appeals stated that an employer has the right to expect decency and civility from its workers. The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment benefits. The claimant admitted that he threatened to kill another employee and that he had been warned and suspended for abusive language and behavior. An employer has an obligation to provide a safe working environment. No employee has the right to threaten to kill another employee or engage in behavior that violates an employee's duty of civility and geniality in the workplace. This is misconduct. Benefits are denied.

DECISION:

The unemployment insurance decision dated March 1, 2013, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/tll