

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**GREGORY T SWANSON**  
Claimant

**CPM ACQUISITION CORP**  
Employer

**APPEAL 22A-UI-06189-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 01/30/22**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the March 2, 2022 (reference 01) unemployment insurance decision that denied benefits finding claimant was discharged on February 4, 2022 for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on April 22, 2022. Claimant participated. Employer participated through Jay Schmitz, Plant Manager. No exhibits were admitted.

**ISSUE:**

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

**FINDINGS OF FACT:**

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

Claimant was employed as a full-time Maintenance Technician from November 14, 2011 until his employment with CPM Acquisition Corporation ended on February 4, 2022. Claimant worked Monday through Friday from 5:30 a.m. until 2:30 p.m. Claimant's direct supervisor was Jay Schmitz, Plant Manager.

Employer has a policy that prohibits violence and intimidation in the workplace. The policy is outlined in the employee handbook. Claimant had access to the handbook.

On February 4, 2022, claimant tossed safety hooks to a coworker, Mitch. The hooks landed and slid across the floor landing about two feet away from Mitch. During this time, claimant was also telling Mitch information about the hooks. Mitch was upset by claimant tossing the hooks towards him. Another employee overheard and reported the incident to Schmitz. While Schmitz was discussing the incident with Mitch, claimant returned to the room and tossed a clamp to Mitch. The clamp hit the metal table and slid closer towards Mitch and Schmitz. Claimant did not throw the items at Mitch or any other employee. Claimant did not say anything threatening during either incident. Claimant was irritated and upset at the time; his words or actions may have been perceived by Mitch or Schmitz as intimidating. Claimant had no intention of intimidating Mitch, Schmitz or any other employee.

On February 4, 2022, employer discharged claimant for violation of its policy prohibiting violence and intimidation. Claimant had no prior warnings for similar conduct.

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

For the reasons that follow, the administrative law judge concludes:

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).

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 cannot be based on such past act or acts. The termination of employment must be based on a current act.

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. 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).

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 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).

Claimant tossed items to a coworker. He did not throw the items at his coworker. While claimant's actions may have been unprofessional, they do not violate employer's policy prohibiting violence and intimidation in the workplace. Without a prior warning, claimant's actions do not rise to the level of substantial misconduct warranting a denial of unemployment insurance benefits. Employer has not met its burden of proving disqualifying job-related misconduct. Benefits are allowed provided claimant is otherwise eligible.

**DECISION:**

The March 2, 2022 (reference 01) unemployment insurance decision is reversed. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.



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April 28, 2022  
Decision Dated and Mailed

acw/acw