

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAWN CARPENTER**  
Claimant

**APPEAL NO. 08A-UI-04181-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CLARKE AMERICAN CHECKS INC**  
Employer

**OC: 03-30-08 R: 02**  
**Claimant: Appellant Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 22, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 19, 2008. The claimant participated in the hearing. Diane Dimitri, Human Resources Manager; Charles Stanton, Third Shift Supervisor; and Michael Austin participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time Production Associate I for Clarke American Checks from February 26, 2007 to March 26, 2008. The claimant is hard of hearing and speaks loudly as a result. On March 25, 2008, the claimant went to Third Shift Supervisor Charles Stanton's office complaining about issues on the floor. The claimant had an "outburst" and became extremely loud and belligerent. He was flailing his arms and was very angry. Mr. Stanton was helping the claimant work on his "people skills" during the past six months and believed he was making progress in talking in a normal tone, but in this case the claimant was much louder than usual. The claimant received a final written warning August 30, 2007, for failing to punch the time clock 42 times in the last five months and for making a sexual comment about a female co-worker. The claimant signed the warning. Under the employer's policy, harassment complaints proceed directly to a final warning with the next step being termination. The employer considered the claimant's conduct March 25, 2008, harassing in nature and his employment was terminated.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. 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 Board, 616 N.W.2d 661, 665 (Iowa 2000). The claimant's voice is quite loud because of his hearing loss. While he was angry and belligerent when speaking to Mr. Stanton March 25, 2008, he was upset about incidents and talk on his shift and his demeanor reflected that. He had received a final warning August 30, 2007, for making a sexual comment about a co-worker, a charge the claimant denies. The employer did not have a firsthand witness to contradict the claimant's testimony about that situation. Consequently, the employer's testimony about that incident cannot be given as much weight as the claimant's denial, because none of the witnesses were present when the situation occurred. Therefore, the administrative law judge is left with the March 25, 2008, incident to consider in making the decision of whether the claimant's actions rise to the level of disqualifying job misconduct. Because this must be considered an isolated incident, the administrative law judge concludes the claimant's conduct is not disqualifying as defined by Iowa law. Benefits are allowed.

**DECISION:**

The April 22, 2008, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw