

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**NICK C RITTER
26 N SULLIVAN
NORA SPRINGS IA 50458**

**AADG INC
CURRIES-GRAHAM
PO BOX 1648
MASON CITY IA 50402 1648**

**Appeal Number: 06A-UI-01343-H2T
OC: 01-08-06 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 31, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 21, 2006. The claimant did participate. The employer did participate through Dan McGuire, Employee Relations Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a production worker full time beginning February 18, 2005 through January 9, 2006 when he was discharged. The claimant was discharged after he pushed a coworker, Eric, on January 6, 2006. The claimant was speaking to his supervisor, Mike

Gordon, on January 6 when Eric came up behind him and was listening to the conversation between him and his supervisor. When the claimant realized that Eric was behind him listening to the conversation, he turned around and pushed Eric away. Eric fell to the floor after being pushed by the claimant. Mr. Gordon immediately took the claimant to his office. The claimant had received the employer's handbook which prohibits inappropriate contact with coworkers. The handbook warns that inappropriate contact or physical violence between coworkers will result in discipline up to and including discharge. The claimant's coworkers had been teasing him and baiting him with verbal taunts in the weeks leading up to the confrontation between the claimant and Eric. The claimant had complained about the harassment, and the employer had scheduled and held a meeting with the employees to resolve the claimant's complaints.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The physical aggression by the claimant, that is his pushing coworker, Eric, was in violation of specific work rules and against commonly known acceptable standards of work behavior. The claimant had the option to first ask Eric to leave him and his supervisor to speak privately or to ask his supervisor, Mr. Gordon, to ask Eric to leave so their conversation could be private. Even if the administrative law judge were to accept that the claimant had been verbally teased, taunted and harassed by his coworkers, it is axiomatic that mere words can never justify assault. There is nothing one coworker can say to another that would justify striking or hitting a fellow employee. The claimant's conduct, that is pushing Eric, is sufficient misconduct to disqualify him from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The January 31, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for reasons related to job misconduct. Benefits are withheld until such time as the claimant works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

tkh/s