

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AHMED KARSHE
Claimant

**DES MOINES INDEPENDENT COMMUNITY
SCHOOL DISTRICT**
Employer

APPEAL NO. 14A-UI-05412-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/27/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Ahmed Karshe (claimant) appealed an unemployment insurance decision dated May 21, 2014, (reference 01), which held that he was not eligible for unemployment insurance benefits because he was discharged from the Des Moines Independent Community School District (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 8, 2014. The claimant participated in the hearing. Ibrahim Abukar interpreted on behalf of the claimant. The employer participated through Rhonda Wagoner, Benefits Specialist and Anthony Spurgetis, Human Resources Generalist. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a part-time bus associate from May 20, 2013, through April 2, 2014, when he was discharged for multiple violation of company policies. On approximately March 28, 2014, the employer received a serious complaint from a parent about the claimant's behavior and placed him on administrative leave while beginning an investigation. The claimant's job was to ride on the bus to assist the bus driver and to help supervise the children, some of whom are special needs children.

The employer reviewed the surveillance recordings from March 10, 2014, and March 27, 2014. The employer did send in a flash drive to the Appeals Bureau but the Appeals Bureau was unable to duplicate that data to send it out to the claimant so it was not used in the hearing. On March 10, 2014, the recording shows the claimant making aggressive physical contact with a student. On March 27, 2014, the recording shows the claimant making an inappropriate verbal exchange and demonstrating an inappropriate physical threat. The claimant viewed the surveillance recordings at the time of his termination but he denied the recordings showed him striking the child. He did admit he was involved in an inappropriate verbal exchange.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on April 2, 2014, for making an inappropriate verbal exchange, demonstrating an inappropriate threat, and making aggressive physical contact with a student during his bus route on two separate days. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated May 21, 2014, (reference 01), is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs