

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON S DECKER
Claimant

WINDSTREAM CORPORATION
Employer

APPEAL 19A-UI-00692-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/23/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 14, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on February 26, 2019. Claimant participated personally and through subpoenaed witnesses Tina Weeldon, Laura Danley, and Ashley Lust. Employer participated through human resource business partner Brian Martin and staff manager Nate Bradbury and was represented by Thomas Kuiper. Employer's Exhibit 1 was received. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in 2011. Claimant last worked as a full-time consumer retention specialist. Claimant was separated from employment on December 21, 2018, when he was terminated.

Employer has a Violence in the Workplace policy warning that threats will not be tolerated. Claimant was aware of the policy.

On December 20, 2018, claimant was working and stated to two co-workers, "If I come in shooting, get down."

On December 21, 2018, the two co-workers reported claimant's comment to staff manager Nate Bradbury. Bradbury contacted human resource business partner Brian Martin by telephone. The witnesses were interviewed with Bradbury in the room and Martin on speaker phone. Employer contacted local law enforcement. Local law enforcement stopped in to speak with Bradbury and was on standby for the remainder of the day. Employer also contacted a private security company, who sent a security guard to be present for a meeting with claimant. Employer's supervisors monitored claimant in the workplace until the security guard arrived.

After the security guard arrived, Bradbury brought claimant into a meeting. Martin was present via speaker phone. Martin asked claimant if he told his co-workers to get down if he came in shooting. Claimant confirmed he made the statement, but stated he was joking. Employer terminated claimant's employment.

Claimant had never been disciplined for similar conduct.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant was terminated for making a threat of gun violence in the workplace. I do not give any weight to employer's testimony of what claimant's co-workers reported on December 21, 2018. Employer chose not to have the co-workers testify and declined to reveal their identities. Therefore, it is anonymous hearsay. I do give weight to Bradbury and Martin's testimony about what claimant admitted saying during their meeting with him on December 21, 2018. I also give weight to claimant's testimony during the hearing that on December 19 or 20 he made a joke to co-workers that implied using gun violence in the workplace. I conclude claimant made a comment to his co-workers threatening gun violence in the workplace.

Claimant's conduct violates employer's policy prohibiting violence in the workplace and is misconduct, even without prior warning. Although claimant asserts he was joking, any reasonable person in today's day and age knows a comment to a co-worker about shooting a weapon in the workplace is not funny and will likely result in termination.

Claimant asserts employer's delay in terminating his employment suggests they did not take his comment seriously and that it was not actually perceived as threatening. The delay did not consist of even one workday, and during that time claimant was being closely monitored by supervisors and local law enforcement while a private security guard was on the way. The evidence shows employer took the threat very seriously.

Employer established claimant was terminated for misconduct.

DECISION:

The January 14, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Christine A. Louis
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Decision Dated and Mailed

cal/scn