

deck hand. The claimant had a stroke in approximately 1996 and has attended anger management classes to control his feelings. The claimant must retain a license from the Iowa Racing and Gaming Commission to work for the employer as provided by Iowa law. In July 2005, the claimant made threats about using an AK-47 and rocket-propelled grenades to take care of his employment problems. The Department of Criminal Investigations looked into the matter and the claimant's license was suspended on August 5, 2005. The employer terminated the claimant on August 8, 2005. The claimant's license has not been reinstated.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant discharged for misconduct. For the following reasons the administrative law judge concludes he was.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The failure of an employee to maintain a license which he must have to perform the duties of the job is misconduct. The

claimant's license was removed. His subsequent termination from employment was misconduct. He is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's August 26, 2005 decision (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 has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible.

bas/kjw