

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MICHAEL W AXNE**  
Claimant

**C & S PRODUCTS CO INC**  
Employer

**APPEAL 19A-UI-09015-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 10/13/19**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

Employer filed an appeal from the November 7, 2019 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 10, 2019, at 9:00 a.m. Claimant participated. Employer participated through Brenda McNealy, Human Resources Manager. Employer's Exhibits 1 – 5 were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.  
Whether claimant was overpaid benefits.  
Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time lead maintenance mechanic from September 26, 2016 until his employment with C & S Products Co. ended on October 16, 2019. (McNealy Testimony)

Employer has a policy prohibiting workplace violence, which states that threats, threatening language, or any other acts of aggression or violence made toward or by any employee will not be tolerated. (Exhibit 1) The policy applies to behavior that occurs in the workplace or at company-sponsored functions. (Exhibit 1) The policy is outlined in the employee handbook. (Exhibit 1; McNealy Testimony) Claimant received a copy of the employee handbook. (Exhibit 4; McNealy Testimony)

On October 13, 2019, claimant had a physical altercation with a coworker's spouse at the coworker's home. (Claimant Testimony) The altercation was preceded by text messages between claimant and his coworker. (McNealy Testimony) Neither the text messages nor the altercation occurred at the workplace or during a company-sponsored function. (McNealy

Testimony) The coworker brought the altercation and text messages to employer's attention on October 14, 2019 and requested to change departments or shifts to avoid contact with claimant. (McNealy Testimony) Employer suspended claimant on October 15, 2019 while it investigated the incidents. (McNealy Testimony) On October 16, 2019, employer discharged claimant for the altercation that occurred on October 13, 2019. (McNealy Testimony)

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

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 disqualification shall continue 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct*. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge cannot be based on such past act or acts. The termination of employment must be based on a current act.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000).

Under the definition of misconduct for purposes of unemployment benefit disqualification, the conduct in question must be "work-connected." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991). The courts have concluded that off duty conduct can have the requisite element of work connection. *Kleidosty v. Emp't Appeal Bd.*, 482 N.W.2d 416, 418 (Iowa 1992). Under similar definitions of misconduct, for an employer to show that an employee's off-duty activities rise to the level of misconduct in connection with the employment, the employer must show by a preponderance of the evidence that the employee's conduct (1) had some nexus with the work; (2) resulted in some harm to the employer's interest, and (3) was conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer's image would suffer. See also *Dray v. Director*, 930 S.W. 2d 390 (Ark. Ct. App. 1996); *In re Kotrba*, 418 N.W. 2d 313 (SD 1988), quoting *Nelson v. Dept. of Emp't Security*, 656 P.2d 242 (WA 1982); 76 *Am. Jur. 2d, Unemployment Compensation* §§77-78.

Claimant was discharged due to an altercation on October 13, 2019. To be disqualifying, claimant's conduct must be "work-connected." The altercation did not take place at work or while on work hours and involved an individual who is not employed by C & S Products, Co.; however, the other participant is the spouse of claimant's coworker. Therefore, claimant's conduct has a slight nexus to work. Furthermore, the altercation caused claimant's coworker to feel unsafe at work, which harms employer's interest of providing a workplace where employees feel safe. However, claimant's altercation did not violate employer's anti-violence policy and claimant did not act with intention or knowledge that employer's image would suffer. Therefore, claimant's conduct was not work-connected. While claimant's conduct may have justified termination of employment, it does not constitute disqualifying job-related misconduct warranting a denial of unemployment insurance benefits. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible. Because claimant's separation was not disqualifying, the issues of overpayment, repayment and chargeability are moot.

**DECISION:**

The November 7, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible. The issues of overpayment, repayment and chargeability are moot.

---

Adrienne C. Williamson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

---

Decision Dated and Mailed

acw/scn