

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ARTHUR J BRYANT
Claimant

APPEAL NO: 08A-UI-02005-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MUSCO SPORTS LIGHTING LLC
Employer

**OC: 01/27/08 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Musco Sports Lighting, L.L.C. (employer) appealed a representative's February 18, 2008 decision (reference 01) that concluded Arthur J. "Joe" Bryant (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 13, 2008. The claimant participated in the hearing. Barry Pence appeared on the employer's behalf and presented testimony from one other witness, Merle Schapkohl. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 20, 1993. Since December 31, 2001 he worked full time as a facilities maintenance assistant on a second shift schedule. His last day of work was January 23, 2008. The employer discharged him on January 28, 2008. The reason asserted for the discharge was making threats of violence toward a supervisor.

The claimant had been having some dispute with his supervisor, Mr. Schapkohl, regarding the flexibility of the claimant's hours. The claimant was not satisfied or happy with the current standing of the issue, which was that Mr. Schapkohl was not willing to allow the claimant to work from 1:00 p.m. to 11:00 p.m., the same schedule of his wife who also worked for the employer, but rather maintained the claimant needed to work his normal schedule, usually 3:00 p.m. to 1:00 a.m. He was also concerned about how other employees who did work an earlier schedule appeared to be standing around and wasting time.

On January 21 the claimant was in the maintenance shop with around a half-dozen coworkers. He appeared to be unhappy, and when asked how things were going responded that the dispute over the schedule issue was "stupid" and that he was "tired of the b.s." Four of the coworkers later reported to human resources that someone had told the claimant he should just

sit down and have a beer with Mr. Schapkohl, to which the claimant allegedly replied he should not do that because he would probably hit Mr. Schapkohl over the head with the bottle. The claimant denied making this statement. It was also reported that the claimant commented, in reference to a former employee who had threatened to bring a gun to work, that "if you thought [the former employee] was a problem, you haven't seen anything yet." The claimant denied making this statement. He allegedly followed this up with a statement that while he did not have a gun, he knew where guns were kept. The claimant again denied making this statement.

The allegation which most concerned the employer was the report that the claimant had stated that he would not use a gun, that he would choose a biological weapon, as it would be more painful, and that he was going to go to Mr. Schapkohl's house. The claimant also denied making this statement. He indicated the only statements he made regarding his potential action were that he might have to take the issues to human resources and that if something did not change he might have to start looking for a new job.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

Iowa Code § 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.

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra.

The reason cited by the employer for discharging the claimant is the alleged threats he made toward his supervisor to his coworker. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant did not make the alleged threats. The employer relies exclusively on the second-hand account from the coworkers; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the coworkers might have been mistaken or whether they are credible. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's February 18, 2008 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs