

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**RONALD W HALL  
374 CHRISTIE LN  
PLEASANT HILL IA 50327**

**CITY OF DES MOINES  
PERSONNEL DEPT  
E 1<sup>ST</sup> & LOCUST ST  
DES MOINES IA 50309**

**CAROL MOSER  
ASSISTANT CITY ATTORNEY  
400 ROBERT D RAY DR  
DES MOINES IA 50309**

**Appeal Number: 04A-UI-07515-DWT  
OC: 06/13/04 R: 02  
Claimant: Respondent (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

City of Des Moines (employer) appealed a representative's July 6, 2004 decision (reference 01) that concluded Ronald W. Hall (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 12, 2004. The claimant participated in the hearing. Carol Moser, the city attorney, and Tom Turner, the human resource director, appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

#### FINDINGS OF FACT:

The claimant started working for the employer on June 28, 1980. He worked as a full-time park technician. The claimant received training about the employer's workplace violence policy. The employer has zero tolerance for workplace violence.

Although the claimant received a written warning in February 2004 for failing to report to work for snow duty, the claimant's job was not in jeopardy prior to May 2004.

In early May the claimant was working on getting swimming pools ready for the season. R.F.; G.R.; C.P; and S.P were assigned to work with the claimant in early May. In mid-May R.F. reported to Randy, a supervisor, that the claimant said he was going to kill M.R. and would also burn down his house. M.R. is a supervisor and gave the claimant the February warning. Even though the claimant allegedly described M.R.'s house, R.F. waited more than a week to report the claimant's alleged threatening comments to Randy. The employer's human resource department learned about R.F.'s report on or about May 15, 2004. The employer contacted the police who interviewed the claimant's co-workers.

The employer suspended the claimant on May 15. Although the claimant denied making any threats about physically harming M.R.'s person or property, the employer discharged the claimant for violating the employer workplace violence policy.

In early May, the claimant was not upset with M.R. The co-workers who reported the comment, however, complained about the claimant not doing his work and making them do his work. The claimant did not make any threatening remarks about or toward M.R. or his property. The claimant does not know where M.R. lives.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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 Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the employer's investigation and the police report, the employer may have had compelling business reasons for discharging the claimant. The facts presented during the

August 12 hearing, however, establish that the claimant did not make any threats about or toward M.R. The claimant's testimony was credible and must be given more weight than the employer's reliance on hearsay information. Therefore, the evidence establishes that the claimant did not make any threats to harm M.R. or his property. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of June 13, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 6, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of June 13, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b