

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MOHAMMED A ALTERBAL
Claimant

APPEAL NO: 12A-UI-02459-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRONTIER COOPERATIVE HERBS
Employer

**OC: 01/22/12
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 27, 2012, reference 01, that held he was discharged for misconduct on January 16, 2012, and benefits are denied. A telephone hearing was held on March 28, 2012. The claimant participated. Nancy Hinkel, HR representative, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time machine operator on April 29, 2005, and last worked for the employer on January 16, 2012. The employer learned thru the local news media claimant was arrested by local law enforcement for holding some family members against their will with a loaded shotgun. He was charged for three counts of assault with a dangerous weapon and false imprisonment.

Claimant made bail and was released from jail on January 17. The employer notified he was terminated on January 19 for the incident because it had a safety concern for its 300 member workforce.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment (emphasis added) on January 19, 2012.

While the employer had the right to be concerned about claimant's holding family members at bay with a loaded shotgun, the incident is not in connection with employment that constitutes job disqualifying misconduct. He was arrested but has not pled guilty or has he been convicted of any crime as of the date of this hearing. Off work conduct that is not related to employment is not a predictability guide as to how an individual might act at the workplace.

Since claimant is not incarcerated, there is no availability for work issue.

DECISION:

The department decision dated February 27, 2012, reference 01, is reversed. The claimant was not discharged for misconduct on January 19, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs