

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS WALKER
Claimant

APPEAL NO. 07A-UI-08280-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

KATELMAN STEEL FABRICATION INC
Employer

OC: 07-29-07 R: 01
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 27, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 12, 2007. The claimant participated in the hearing. Tom Fauble, Plant Manager and Tony Bailey, General Operations Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time painter for Katelman Steel Fabrication from May 9, 2006 to August 3, 2007. The claimant was running an overhead crane August 3, 2007, when Plant Manager Tom Fauble noticed that the materials the claimant was moving were in danger of dragging or flipping and yelled, “No, no, no” and/or “stop, stop, stop” to the claimant. Mr. Fauble was 25 to 30 feet away from the claimant and yelled out of excitement rather than anger. The claimant became upset and called Mr. Fauble a “motherfucker” and asked why he had to talk to him that way. Mr. Fauble told him to clock out and go home and the claimant got out of the crane, got in Mr. Fauble’s face and chest bumped him. Mr. Fauble told him to go home and the claimant threw his gloves at Mr. Fauble and chest bumped him again and Mr. Fauble told him to clock out and go home because he was fired. The employer’s policy states that any physical confrontations will result in termination and the claimant was aware of the policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

While the claimant testified he was under a great deal of stress and "just snapped," he used profanity, threw his gloves and chest bumped Mr. Fauble twice in violation of the employer's policy. He had several opportunities to stop and reconsider his actions but instead of doing so he persisted in unprofessional and inappropriate behavior, assaulting Mr. Fauble and placing him in fear that a physical fight was going to occur. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The August 27, 2007, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has

worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css