

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ADAM H MILLER**  
Claimant

**LENNOX INDUSTRIES INC**  
Employer

**APPEAL 15A-UI-06817-CL-T  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/24/15  
Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 10, 2015, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on July 28, 2015. Claimant participated. Employer did not participate.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a fabrication operator from August 14, 2001, and was separated from employment on May 29, 2015, when he was suspended without pay and later terminated.

In the three months preceding claimant's separation from employment, he was having difficulties with his co-workers. He had reported his co-workers for lack of production on numerous occasions. His co-workers retaliated by throwing claimant's work equipment in the trash can. Claimant told his foreman and other management-level employees, but nothing was done to rectify the situation.

On May 27, 2015, claimant saw comments written in employer's bathroom that stated he was a "red-headed, retarded bitch" and stating, "Adam Miller sucks cock." Claimant took a picture of the comments and told his foreman. Claimant stated he wanted to go home, and his foreman asked him why he thought the comments were a big deal and told him not to worry about it.

On May 28, 2015, claimant questioned an employee that he believed may have written the comments in the bathroom. As he was doing so, another employee approached claimant to the point where only one-half inch separated their faces. The employee and claimant were yelling at each other. The employee told claimant to "get the fuck out of there." Claimant felt threatened by the close physical proximity, and asked the employee to back away three times. After the employee did not back away, claimant gently pushed the employee with one hand about six to eight inches. The employee moved closer to claimant. Claimant again asked the employee to back away. The employee did not do so, and claimant again gently pushed the employee with one hand. The employee moved closer to claimant. The claimant asked the employee to back away a third time. The employee failed to do so. Claimant gently pushed the employee back six to eight inches. The employee moved closer to claimant. Claimant walked away.

On May 29, 2015, claimant was interviewed by employer about the incident. He was then suspended without pay while employer further investigated the incident.

On June 28, 2015, employer terminated claimant for violating a work rule prohibiting bullying and violence in the workplace.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Employers generally have an interest in protecting the safety of all of its employees and invitees. However, in this case, employer did not show claimant was the aggressor in the incident that occurred on May 28, 2015. Although claimant initiated the questioning regarding the comments in the bathroom, it was his co-worker who "got into his face." Claimant only gently pushed the employee a few inches back after repeatedly asking the employee to back away. When this was unsuccessful, claimant retreated from the situation. According to claimant, he did not threaten or hurt anyone during the incident. Based on claimant's testimony, he acted reasonably in the situation.

Employer has failed to establish misconduct.

**DECISION:**

The June 10, 2015, (reference 01) unemployment insurance decision is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

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Decision Dated and Mailed

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