

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CODY D PETERSON**  
Claimant

**APPEAL NO. 10A-UI-01993-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WILSON TRAILER CO**  
Employer

**Original Claim: 01/10/10  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated February 1, 2010, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on March 25, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Jim Sharp participated in the hearing on behalf of the employer with a witness, Kevin Bennett.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer as a welder and service and repair worker from December 28, 2005, to January 12, 2010. He was informed and understood that under the employer's work rules, he could be terminated for receiving three warnings in one year. The claimant received warnings on April 29, 2009, for violating the work rule regarding using cell phone on company time, and on October 28, 2009, for threatening to kick a coworker's ass. He knew he could be discharged if he received another warning.

On January 11, 2010, the claimant and a coworker got into an argument after the claimant tried to close the door to the shop and the coworker tried to stop him. The claimant raised his hands and told the coworker that he would kick his ass. The coworker replied with the same comment. The claimant walked away stating, "You can try it."

The employer discharged the claimant on January 15, 2010, for threatening a coworker and getting his third warning.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. I believe that the claimant made the comment about kicking his coworker's ass. He had been warned about similar conduct a couple of months earlier. Work-connected misconduct has been proven in this case.

**DECISION:**

The unemployment insurance decision dated February 1, 2010, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw