

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CURTIS J SCHWARTZ
Claimant

APPEAL NO: 18A-UI-10342-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN SERVICES IN IOWA INC
Employer

OC: 09/16/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 12, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 30, 2018. The claimant participated personally. The employer registered witness, Kristen Holaday, who was unavailable when called for the hearing. She did not respond to the voicemail directing her to call the Appeals Bureau to participate.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Employer Exhibit 1 was admitted in lieu of the employer's participation. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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: The claimant was employed full-time as a youth specialist and was separated from employment on September 20, 2018, when he was discharged for using physical force with a client.

The employer provides residential services for youth with behavioral issues, including aggression. When the claimant was hired, he received training on de-escalation and handling aggressive clients. The claimant was informed and understood that under the employer's work rules, he was to follow MANDT System practices to handle aggressive residents (Employer Exhibit 1). The claimant acknowledged the MANDT technique prohibits forcing a person to the ground (Claimant testimony). The MANDT technique promotes physically crossing a client's arms across their body to prevent movement (such as hitting or punching) so that the client can be moved to safety room. Prior to separation, the claimant had been issued a warning for failing to follow the employer's de-escalation procedures, when he had physically taken a client to the ground (Claimant testimony).

The final incident occurred on September 18, 2018, around 7:30 a.m. while the claimant was working in the kitchen and received a call for assistance from two female employees working in the den. When the claimant arrived, he saw a fourteen year old male client physically hit the staff members aside the head and shoulders, as well as put a knee into the chest of a ten year old boy and hit him. The client was known for being aggressive and "hating women." The claimant responded by "taking him down" and putting his knee on the client's chest for approximately thirty seconds. While he did so, one of the female staff members told him to stop. At the same time, the claimant put his hand under the jaw of the client to prevent biting or spitting.

Thereafter, the client stood up and the claimant put his hand on the chin and pushed him to the wall. The client was described as a lean and tall boy, but very strong. In comparison, the claimant is a sixty-eight year old male, approximately five feet eight inches tall and 285 pounds. The claimant then left the room to catch his breath and cool down.

The claimant acknowledged he should not have taken the client to the ground, as the restraint techniques instruct the client's arms to be placed over their body to disarm them, so they can be transported to a "safety room" away from other people. In this case, the client wiggled and dropped down after the claimant made contact with him. The employer received reports the claimant had his hands on the client's throat (Employer Exhibit 1), which he denied. He stated his hand was under the chin but not against the throat. The claimant opined that the unit was short-staffed and that he felt a sense of responsibility to act because "women should not be beaten." He was subsequently discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). In this case, the claimant was discharged after using excessive physical force to restrain an aggressive client. The claimant received training on proper restraining of aggressive clients, which includes crossing the arms of the client in a “bear hug” fashion to prevent movement. In this case, the claimant used his physical stature to physically take the client down, where he put his knee on his chest. At this point the claimant did not intend to exercise the techniques he had been trained upon, as there was no way to cross the arms over the client’s chest, with the claimant on top of him.

The administrative law judge recognizes the stressful and potentially unsafe scenarios employees, such as the claimant, can encounter when working with aggressive clients. This is why employees are required to attend the MANDT training to properly respond to such scenarios. However, the administrative law judge is not persuaded that the claimant was attempting to follow the permissible de-escalation techniques by applying his 285 pound body to the client’s chest. In no way did that conduct support stopping the claimant’s arms from moving or facilitate transporting him to the safety room.

Further, the administrative law judge is not persuaded that the claimant’s conduct of putting his hand on the neck or chin of the client could be done without somehow grasping the neck or throat of the client, if the claimant applied such force that he could physically move the client up against the wall while having his hand on neck or throat. This is not a reasonable response, even to an aggressive client. Because the claimant had been previously warned for taking a client to the ground, as he did again on September 18, 2018, this was not an isolated instance of poor judgment. The administrative law judge is persuaded the claimant knew or should have known his conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the administrative law judge concludes the claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

DECISION:

The October 12, 2018, (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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn