

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANNY E CLANCY
Claimant

VERMEER MANUFACTURING COMPANY
Employer

APPEAL 18A-UI-09012-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/05/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 21, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephonic hearing was held on September 17, 2018. The claimant, Danny Clancy, participated. The employer, Vermeer Manufacturing Company, Inc., participated through Morgan Landon, HR Business Partner; Angela Paschal, former HR Business Partner; and Marty Stout, Production Manager. Employer's Exhibits 1 through 6 were received and admitted into the record without objection.

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, most recently as an assembler, from March 8, 1993, until August 3, 2018, when he was discharged. On August 2, claimant's group leader came to management to report that claimant made a threatening comment to him. Specifically, this comment alluded to sexual violence toward the group leader's children. After learning about this comment, Paschal and Stout conducted an investigation. They interviewed the group leader, claimant, and multiple of claimant's colleagues. During these interviews, the employer learned about three additional inappropriate comments that claimant made. One comment alluded to a mass shooting at the workplace, another comment alluded to a tornado destroying the workplace, and a third comment referenced claimant attacking suppliers. When the employer interviewed claimant, he admitted making three of the four comments. He did not specifically recall making the comment about the mass shooting, though during his testimony, claimant admitted making that comment as well. Claimant knew the comments he made were inappropriate, and he knew that making the comments placed his job in jeopardy. Claimant had been warned in the past for violating the employer's respectful workplace and safety and security policies. (Exhibits 3 and 4).

REASONING AND CONCLUSIONS OF LAW:

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

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). 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).

In this case, claimant admits that he made threatening comments at work. These comments threatened one employee and his family specifically, the employer's suppliers, and all employees generally. Claimant was aware that these were inappropriate comments and knew he could lose his job for making them. The employer has established that claimant was discharged from employment for disqualifying, job-related misconduct even without prior warning. Benefits are withheld.

DECISION:

The August 21, 2018, (reference 01) unemployment insurance decision is affirmed. 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn