

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHILIP A JOHNSON
Claimant

APPEAL NO. 16A-UI-10750-S1

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEE ZEE INC
Employer

OC: 07/03/16
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Philip Johnson (claimant) appealed a representative's September 26, 2016, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Dee Zee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for October 20, 2016, in Des Moines, Iowa. The claimant participated personally. The employer did not appear for the in-person hearing. It registered a telephone number. The administrative law judge called the number to find out why the employer registered a telephone number for an in-person hearing. The administrative law judge spoke to a woman who answered the telephone. She indicated the employer was not available. A message was left for the employer. The employer did not respond and did not participate in the hearing.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 22, 2011, as a full-time tote cleaner/fork lift driver. The claimant signed for receipt of the employer's handbook. The handbook prohibits employees from fighting.

The claimant had carpal tunnel surgery in November 2015, and February 2016. After his surgery he was reassigned to a different job due to his work restrictions. The new job paid less than his pre-injury job. The claimant complained to the employer about this. The employer did not issue the claimant any warnings until his work injury. After his injury the employer issued him approximately twenty warnings. Once, his supervisor told him to throw his timecard away. The claimant threw it away and the employer gave him a warning. The employer gave him a warning after a female co-worker said he threw something at her.

The claimant complained to the employer about a male co-worker who was harassing him. The employer did not do anything. On September 10, 2016, the claimant approached the male co-

worker to try to make amends. The male co-worker called the claimant a "bitch". The claimant asked him what he said. The male co-worker repeated himself. The claimant hit the male co-worker with his hand on the side of the male co-worker's face. The claimant did not think he hit him too hard. The employer sent the claimant home until September 12, 2016. On September 12, 2016, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. He intentionally approached the co-worker, heard the comment twice, and hit a co-worker. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's September 26, 2016, decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs