

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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US POSTAL SERVICE
STATE COORDINATOR
PO BOX 189994
DES MOINES IA 50318

Appeal Number: 06A-UCFE-00025-SWT
OC: 07/02/06 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 31, 2006, reference 01, that concluded claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 22, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Steve Eagle participated in the hearing on behalf of the employer with a witness, Dan Kuhn.

FINDINGS OF FACT:

The claimant worked as a letter carrier for the employer from October 6, 2001 to April 28, 2006. Under the employer's work rules, workplace violence was prohibited. The claimant's past discipline included a letter of warning in February 2004 for engaging in a verbal argument with a coworker, a seven-day suspension June 2004 for failing to properly report an accident and a

14-day suspension in October 2004 for telling a supervisor that he did not have to answer to her because she was not the claimant's boss.

On April 27, 2006, a coworker, David Meyne, and another employee were talking about a personnel matter. The claimant interjected in the conversation, which upset Meyne to the degree. He grabbed the claimant by the front of his shirt and would not let go. He spat on the claimant and directed loud profanity toward him. The claimant was unable to immediately escape because Meyne had his shirt, but there was a closed utility room behind him. Meyne spat on the claimant again and pulled so hard he ripped the claimant's shirt. Then Meyne let go of his shirt. The claimant had a can of pop in his hand, and he tossed it toward the Meyne's chest to distract him. He then reached behind him, opened the door to the utility room and retreated to the utility room and closed the door. He stayed in the room until Meyne left. They did not have any further contact afterward. The claimant did not raise his voice above a normal level during the incident with Meyne.

The claimant was suspended on April 28, 2006, pending investigation. On May 23, 2006, the employer notified the claimant that he was being removed because the employer believed he had violated the workplace violence policy.

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.

Iowa Code section 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.

871 IAC 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 Department of Job Service, 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 Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

No willful or substantial misconduct has been proven in this case. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credible and consistently with his prior statements, and his testimony outweighs the hearsay evidence to the contrary. Based on that testimony, the claimant did not start the physical conflict and retreated when he was able to. The only physical force he used during the incident was tossing the pop can, which was necessary to give himself the opportunity to open the door behind him to avoid the physical aggression from Meyne.

DECISION:

The unemployment insurance decision dated July 31, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/cs