**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**NATHAN J LISK**
Claimant

**AUTOMOTIVE ENTERPRISES COMPANY**
Employer

**APPEAL NO: 13A-UI-08121-DWT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 12/23/12**
**Claimant: Appellant (4)**

Iowa Code § 96.5(2)a – Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's July 3, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Tom Feldman, the shop foreman, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits from June 16 through August 17, 2013.

**ISSUE:**

Did the employer discharge the claimant for a current act of work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in August 2007. The clamant worked as a full-time buffer. In March 2013, the claimant told the employer he would be quitting in the summer because he was going to school. The claimant would have worked until August 16. When the claimant's employment ended on June 18 he had not yet given the effective date of his resignation.

In late May or early June, the claimant was upset and frustrated with an owner, R. The claimant made a comment to Feldman that R. should quit f---ing with him or he, the claimant, would break his other leg. The claimant had not meant this comment as a threat; he was just venting his frustration. Feldman told him he should not make comments like this. Nothing more was said until June 18 or two or more weeks later.

On June 18, the employer discharged the claimant for threatening an owner. The employer does not have a written policy, but Feldman asserted it was common sense that employees should not make comments like this. The claimant's job was not in jeopardy before this comment.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The employer knew the claimant was quitting to go to school. Even though the claimant had not given the employer the effective date of his resignation, he had already told the employer he was quitting. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6(2). The law assumes a clamant is not qualified to receive when he quits to go to school. 871 IAC 24.25(26). As of August 18, 2013, the claimant is not qualified to receive benefits.

Since the employer discharged him on June 18 or before the effective date of his resignation, did the claimant's comment amount to work-connected misconduct. 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 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).

The law defines misconduct as:

> 1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
> 2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
> 3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).:

The claimant was frustrated and vented his frustration when he made the comment in Feldman's presence. Since nothing was done immediately, the evidence does not indicate that Feldman considered the claimant's comment a threat at the time he made it. The claimant used poor judgment in venting his frustration the way he did, but the evidence does not establish that the claimant actually threatened an owner. The claimant did not commit a current act of work-connected misconduct. Therefore, between June 16 and August 17, 2013, the claimant is qualified to receive benefits.

**DECISION:**

The representative's July 3, 2013 determination (reference 01) is modified in the claimant's favor. The claimant did not commit work-connected misconduct. Therefore, he is qualified to

receive benefits between June 16 and August 17, 2013, provided he meets all other eligibility requirement during these weeks. As of August 18, 2013, the claimant is not qualified to receive benefits because he resigned his employment to go to school. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/css