IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MICHAEL MURPHY Claimant **WASHINGTON COMMUNITY SCHOOL DISTRICT** Employer	**APPEAL 19A-UI-07796-S1-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 07/14/19** **Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Michael Murphy (claimant) appealed a representative's September 26, 2019, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Washington Community School District (employer) for Conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 28, 2019. The claimant was represented by Bruce Walker, Attorney at Law, and participated personally. The employer was represented by Brett Nitzschke, Attorney at Law, and participated by Willie Stone, Superintendent, and Jeff Dileman, Business Official.

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 February 18, 2013, as a substitute teacher. The employer placed the claimant five days per week since February 18, 2013. It has a handbook and board policies but the claimant did not receive either of those documents. One board policy stated that employees may use reasonable force to protect the safety of students and others. The employer gave the claimant Crisis Intervention Planning (CIP) training. The claimant received no warnings from the employer.

On May 7, 2019, the claimant was working as a substitute physical education teacher. Two students were behaving and speaking inappropriately. The claimant told the two to sit separately. One of the students talked about hitting and kicking the claimant. The student's words escalated. The student said to the claimant, "I'm going to kill you." The claimant was frightened for himself and the other students and relied on his CIP training.

The claimant escorted the student to the office by holding the student's elbow. When he reached the office, the claimant did not go inside because he wanted to have visual contact with

his remaining students. He released the elbow of the escorted student at the office threshold. As the student walked into the office, the student stumbled over a rescue dog and into a chair.

On May 9, 2019, the employer terminated the claimant for not following board policies. The employer did not think it was reasonable for the claimant to be afraid of the student. It thought the claimant should have told the student to walk by himself to the office or the claimant should have called the principal. The employer thought the claimant had an "aggressiveness of movement" with the student.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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 disqualification shall continue 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).

Iowa Admin. Code r. 871-24.32(4) provides:

> (4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of

> misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). On May 7, 2019, the claimant was fearful. He had been threatened by a student and followed the training the employer provided with regard to crisis intervention.

The employer provided a witness who watched a video of the claimant's interaction with the student and thought the claimant was aggressive. It did not provide first-hand testimony of a person who saw the incident. Crisis procedures are learned and practiced for times when a person perceives a threat and must act. When that person has the lives of children to protect, it is not for others to second guess the reasonableness of the threat after the fear has passed. A person who has been threatened has a greater understanding of the exigency of the circumstances than the person who watched the situation on a screen.

After delivering the student to the office, the claimant released the student. No evidence was provided by the employer to rebut the testimony that the student tripped over the service animal. The employer, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's September 26, 2019, decision (reference 02) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed.

_____
Beth A. Scheetz
Administrative Law Judge

_____
Decision Dated and Mailed

bas/scn