

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRIS M MUNDY
Claimant

BWW RESOURCES LLC
Employer

**APPEAL 21A-UI-08402-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/31/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the March 22, 2021 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 7, 2021, at 2:00 p.m. Claimant participated. Employer participated through Robbie Young, General Manager. No exhibits were admitted.

ISSUE:

Whether claimant's separation was a discharge 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 as a part-time Cook from July 22, 2020 until his employment with BWW Resources (d/b/a Buffalo Wild Wings restaurant) ended on October 15, 2020.

Employer has a policy that requires employees to treat each other with respect and states that harassment and threats of violence will not be tolerated. The policy is included in the employee handbook. Claimant received a copy of the handbook. The policy leaves disciplinary action up to employer's discretion depending on the severity.

On October 12, 2020, claimant argued with his friend who also worked for employer at the time. The argument occurred via text message. Neither claimant nor the coworker were working at the time the text messages were exchanged. The text messages included profanity and name-calling. Claimant also texted his coworker "it'll take one hit from me" and "if I show up, I'll lose my job." The coworker interpreted the text messages to be a threat of violence by claimant and notified employer. On October 15, 2020, employer terminated claimant's employment for violation of its anti-violence policy. Claimant had no prior warnings for similar conduct.

REASONING AND CONCLUSIONS OF LAW:

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

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000).

Under the definition of misconduct for purposes of unemployment benefit disqualification, the conduct in question must be "work-connected." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991). The courts have concluded that off duty conduct can have the requisite element of work connection. *Kleidosty v. Emp't Appeal Bd.*, 482 N.W.2d 416, 418 (Iowa 1992).

Under similar definitions of misconduct, for an employer to show that an employee's off-duty activities rise to the level of misconduct in connection with the employment, the employer must show by a preponderance of the evidence that the employee's conduct (1) had some nexus with the work; (2) resulted in some harm to the employer's interest, and (3) was conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer's image would suffer. See also *Dray v. Director*, 930 S.W. 2d 390 (Ark. Ct. App. 1996); *In re Kotrba*, 418 N.W. 2d 313 (SD 1988), quoting *Nelson v. Dept. of Emp't Security*, 656 P.2d 242 (WA 1982); 76 *Am. Jur. 2d, Unemployment Compensation* §§77-78.

Claimant was discharged for threatening a coworker while off-duty. To be disqualifying, claimant's conduct must be "work-connected." Claimant's statement concerned a coworker and, thus, had a nexus to work. The statements also caused harm to employer's interest of providing a workplace where employees feel safe. Claimant's statement violated employer's anti-violence policy. However, there is no evidence that claimant acted with intention or knowledge that employer's image would suffer. No one else was a party to the text messages. While claimant's conduct may have justified termination of employment, it does not constitute disqualifying job-related misconduct warranting a denial of unemployment insurance benefits. Therefore benefits are allowed provided claimant is otherwise eligible.

DECISION:

The March 22, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.



Adrienne C. Williamson
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June 22, 2021
Decision Dated and Mailed

acw/scn