

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICTOR L TATE**  
Claimant

**APPEAL NO. 07A-UI-00735-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FOODS INC**  
Employer

**OC: 12-03-06 R: 02  
Claimant: Appellant (1)**

Iowa Code section 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 9, 2007, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on February 7, 2007. The claimant did participate. The employer did participate through Pat Childress, Store Director.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a produce clerk part time beginning August 28, 2006 through October 20, 2006 when he was discharged. On October 20, 2006 the claimant told his supervisors, Rick Lane and Willy Anderson that he was going to meet R.J. when they were not on the clock and he would handle him. The claimant assumed that R.J. had written something nasty about him on one of the bathroom walls. The employer's handbook prohibits threatening others and employees are trained in orientation about the policy.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant was frustrated with a coworker because he believed the coworker was picking on him. The claimant believed that R.J. had written something nasty about him on a bathroom wall. There was no evidence to support the claimant that it was R.J. that had written on the wall and the employer did not discipline him for an act they could not establish he committed. The claimant then told his supervisors that he would handle R.J. when they were both off the clock. The employer took this statement as a threat against R.J. by Mr. Tate. The claimant knew or should have known that threatening a coworker is conduct not in the employer's best interest. The claimant's threat against R.J. is sufficient misconduct to disqualify him from receipt of unemployment insurance benefits.

**DECISION:**

The January 9, 2007, reference 04 decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has

worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs