

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SEAN M ASHBY
Claimant

**PEPSI COLA BOTTLING COMPANY OF
DAVENPORT**
Employer

APPEAL 22A-UI-05081-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/30/22
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871—24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the February 17, 2022, (reference 01) unemployment insurance decision that allowed benefits based upon the determination that claimant was discharged from employment, but not for disqualifying misconduct. The parties were properly notified of the hearing. A telephone hearing was held on April 6, 2022. The claimant, Sean M. Ashby, did not participate. The employer, Pepsi Cola Bottling Company of Davenport, participated through testifying witnesses Mark Schneider and Rhonda Wilkinson. Employer's Exhibits 1 through 3 were admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a warehouse employee from February 5, 2011, until this employment ended on January 31, 2022, when he was discharged.

The evening of January 27, 2022, claimant engaged in an argument with a female coworker. The employer characterized his conduct toward the female coworker as "verbal abuse." Another male coworker stepped in and told claimant to stop addressing the female coworker in the manner that he was. In response, claimant threatened physical violence, including threatening to shoot the male coworker who intervened. This was witnessed by at least one other coworker who was not involved in the incident.

Claimant was confronted by his direct supervisor, Tim Feugan, about the incident. Feugan asked claimant whether he would like to try to deescalate the situation and remain at work. Claimant elected to go home. Thereafter, claimant became ill and could not come to work. On January 31, 2022, Schneider called claimant to inform him of the decision to discharge him from employment.

Claimant had been warned for similar conduct on December 13, 2021, as well. In that instance, he engaged in “verbally abusive” behavior toward the same female coworker. When other male coworkers intervened, claimant became physically aggressive. During the warning meeting on December 13, 2021, Schneider told claimant that the incident could have resulted in his termination, and if it occurred again, it would result in termination.

The administrative record indicates that claimant has received no unemployment insurance benefit payments since this separation from employment. The employer received a notice of fact finding and was waiting for the call at the appointed time. Wilkinson followed up by calling Iowa Workforce Development later, but she did not receive an answer regarding why the employer did not receive a call.

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.

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).

The employer presented evidence that claimant engaged in verbally abusive behavior toward his coworkers, and threatened physical violence toward at least one coworker on his final day of employment. This would constitute disqualifying job-related misconduct even without prior warning. However, claimant had been warned in December 2021 for very similar behavior. At that time, he was explicitly warned that he would be discharged if he engaged in the same conduct again. The conduct constitutes disqualifying misconduct, and benefits are denied.

Claimant's separation was disqualifying; however, he has not received any unemployment insurance benefits. The issue of overpayment is moot. As the employer's account has not been subject to charges based on this separation, the issue of participation in the fact-finding interview is moot.

DECISION:

The February 17, 2022, (reference 01) unemployment insurance decision is reversed. 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. Claimant has not received any unemployment insurance benefits. The issues of overpayment and the employer's participation in the fact-finding interview are moot.



Alexis D. Rowe
Administrative Law Judge

April 13, 2022
Decision Dated and Mailed

ar/kmj