

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN M MORENZ
Claimant

APPEAL NO. 12A-UI-12760-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

MEDIVAC CORP
Employer

OC: 09/23/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Medivac Corporation filed a timely appeal from a representative's decision dated October 15, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a hearing was held in Council Bluffs, Iowa on April 18, 2013. Mr. Morenz appeared personally. Appearing as witnesses for the employer were Ms. Nella Seivert, Company President/CEO, and Robert Seivert, Vice-President, and Ms. Lynn Kropf, Critical Care Paramedic. Employer's Exhibits A through E were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: John Morenz began his most recent period of employment with Medivac Corporation in October 2007. Mr. Morenz was employed as a part-time critical care paramedic. The claimant was paid by the hour and by shift pay. His immediate supervisor was the company president and CEO, Ms. Nella Seivert. Mr. Morenz was discharged from his employment with Medivac Corporation on September 26, 2012 based on an incident that had taken place at the employer's facility on September 21, 2012.

On that date, Mr. Morenz had been summoned along with Ms. Lynn Kropf to work as a stand-by unit at the office while the company's primary paramedics unit was sent out on local parade duty that day. When Mr. Morenz arrived, he turned on the tv in the office area and began working on paperwork. Ms. Kropf was fielding telephone calls and was having difficulty hearing the callers because of the volume of the tv set. Ms. Kropf twice requested the claimant to turn the tv down so that she could hear the callers and Mr. Morenz twice stated, "No." Because of Mr. Morenz's refusal, Ms. Kropf decided to turn the volume down herself and began to move to the remote control. When Mr. Morenz became aware of Ms. Kropf's movement, he bolted upright out of his

chair in a menacing manner and kicked a chair that was adjacent to him approximately four feet across the room narrowly missing Ms. Kropf and striking a metal credenza. Ms. Kropf was frightened and intimidated by the claimant's actions as she could feel the breeze of the chair as it was propelled by her. Ms. Kropf became further intimidated when Mr. Morenz continued to stand in a menacing manner with closed fists held at the ready on each side of his chest. Mr. Morenz then calmed down, sat down and himself turned off the tv. Mr. Morenz then left the premises. A billing clerk that had been present at the time then began crying saying that she was fearful that violence was about to take place. Ms. Kropf, the other paramedic, also was frightened and intimidated by Mr. Morenz's conduct. Both parties reported the incident to the primary medic in charge when she returned to the facility. The matter was reported to the company president, Ms. Seivert, and Ms. Seivert further investigated.

When questioned about the matter by the company president, Mr. Morenz admitted kicking the chair and propelling it across the room causing surface dents in three places on the metal credenza. Mr. Morenz admitted to having a bad day both at work and home and stated that his action was "better than hitting her."

The employer considered Mr. Morenz's conduct to be a serious violation of its threats of violence in the workplace policy. The employer did not consider the incident to be isolated as Ms. Seivert was aware of two previous incidents that had taken place while she was employed by the company involving Mr. Morenz. On one occasion the claimant had punched a company locker and on another occasion the claimant had engaged in a shouting match with another employee. Based upon the claimant's past conduct and most recent incident and the claimant's statement that his actions were "better than hitting her," a decision was made to terminate Mr. Morenz from his employment.

Mr. Morenz agrees that he was asked to turn off the television during the incident in question and that he had refused to do so. It is claimant's belief that he only put his foot on the chair and pushed it across the room, however. Mr. Morenz was upset that day for other reasons and momentarily lost his temper.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter Mr. Morenz was aware or should have been aware of the company's policy which prohibited violence or the threats of violence in the workplace. Mr. Morenz had previously been involved in two incidents while employed at Medivac Corporation previously where his loss of temper had been an employment issue. During the most recent incident, the claimant had lost his temper and propelled a chair across the room narrowly missing another employee causing visible damage to a metal file credenza. Both the other paramedic, Ms. Kropf, and a bookkeeper who was present, were upset and intimidated not only by Mr. Morenz's action of propelling the chair across the room but also the aggressive stance that he took creating fear in the workers that further violence might ensue.

The employer was reasonable in concluding this was not an isolated instance of poor judgment as Ms. Seivert was aware that it had occurred two times previously. It appears that the claimant's statement making reference to the possibility of hitting another worker was the final thing that caused the employer to make a decision to terminate Mr. Morenz from his employment; it was not only inappropriate but also verified to his employer the claimant's propensity towards violence.

For the reasons stated herein, the administrative law judge concludes that the employer has sustained its burden of proof in showing that Mr. Morenz's discharge took place under disqualifying conditions. Unemployment insurance benefits are, therefore, withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated October 15, 2012, reference 01, is reversed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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