

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNY N PATTON

Claimant

APPEAL NO: 12A-UI-10471-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC

Employer

OC: 08/05/12

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated August 22, 2012, reference 01, that held he was discharged for misconduct on July 27, 2012, and which denied benefits. A telephone hearing was held on September 26, 2012. The claimant participated. Charles Macy, branch manager, Mitchell Seitz, account representative, and Rocio Ferna, HR assistant, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment on assignment at Cal Western Packaging through USA Staffing. About five years later, he continued as a part-time forklift driver for the employer on February 13, 2012, and last worked on July 27. Account representative Seitz and claimant were involved in an incident at the work place on the morning of July 27.

Seitz approached claimant in the parking lot when he returned from break about 9:20 a.m. and he began looking into his car. Claimant got out of his car, denied he had been drinking, and approached Seitz with raised his arms, which backed him up. Seitz told claimant to leave and called the police.

Claimant called from his home to the Des Moines branch manager about the incident. The manager had received a report from Seitz that claimant had threatened him. The manager told claimant he was removed from the assignment and to check back on Monday for further work. He consulted with the HR department about the incident. It determined claimant had threatened Seitz, which is a major violation of policy, and he should be discharged. The manager told claimant he was discharged from employment.

Claimant denies he threatened Seitz, though he did approach him with raised arms when questioned about whether he had been drinking. There is no evidence of any report police or phone records of claimant calls to the employer.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on July 27, 2012, for a threat of violence against another employee.

There was no physical contact between claimant and Seitz. There was no word from claimant to Seitz threatening physical harm. Claimant voluntarily left the premises. There is no police report or record that it visited claimant at his residence. There is no evidence of an employer criminal complaint against claimant. While Seitz might have felt threatened, the evidence does not support claimant acted with any intent to cause harm.

Claimant offered specific, credible testimony that Seitz confronted him in the parking lot looking into his car and asking whether he had been drinking. Seitz testified claimant approached him with a fist, backing him up for no reason, which is not credible. Although claimant had worked only five months for the employer, he had worked the same assignment for five years without any similar incident.

The employer has failed to establish claimant threatened Seitz with physical violence that constitutes job-disqualifying misconduct.

DECISION:

The department decision dated August 22, 2012, reference 01, is reversed. The claimant was not discharged for misconduct on July 27, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw