

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

GRANVILLE DANIELS
700 – 13TH ST SE
MASON CITY IA 50401

AADG INC
CURRIES-GRAHAM
PO BOX 1648
MASON CITY IA 50402-1648

AMENDED

Appeal Number: 05A-UI-11821-BT
OC: 10/30/05 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96 5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Graham (employer) appealed an unemployment insurance decision dated November 15, 2005, reference 01, which held that Granville Daniels (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 7, 2005. The claimant participated in the hearing. The employer participated through Mark Evers, Director of Human Resources and Jeff Neuwohner, Safety Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time laborer for this door manufacturer from May 16, 2005 through October 26, 2005. He was discharged for an altercation with a female employee, which was in violation of the employer's zero tolerance violence policy. The claimant had been suspended in August 2005 for using abusive and demeaning language towards the same employee. He was advised at that time that it was a final warning. The female employee had been calling the claimant a "bitch" and "m-f" all day on October 24, 2005. Later in the day, the claimant asked this employee for some potato skins and when the employee refused, the altercation ensued. The employer reports the claimant came up behind the woman, grabbed her, shook her and called her a bitch. The woman complained and there were several other witnesses who confirmed this account. After the employer investigated the incident, both employees were fired.

The claimant denies touching the other employee. He does admit he got down from the forklift and walked over to her and told her to quit talking. The claimant admitted he used profanity back towards this employee but only in response to what she was saying to him. He told this woman to not speak to him and not look his way "or else." The claimant reported the other employee then shot his leg with a staple gun. The claimant filed a police report about the co-employee approximately three weeks before the hearing.

The claimant filed a claim for unemployment insurance benefits effective November 15, 2005 but has not received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for having a physical altercation with a co-employee, which was in violation of the employer's zero tolerance violence policy. The claimant denies touching the co-worker but his explanation of what did happen is sufficient to constitute an assault, since physical contact is not required. If the claimant had a problem with this co-employee, he should have brought his concerns to the employer. He was not acting in self-defense but actually escalated the altercation when he walked over to the employee and threatened her. In order to establish the claimant acted out of self-defense, he would need to show freedom from fault, a necessity to fight back and an attempt to retreat. Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995). Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated November 15, 2005, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has been overpaid \$2,233.00

sdb/tjc/kjw