

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TYREN HARPER
Claimant

L A LEASING INC
Employer

APPEAL 14A-UI-12508-KCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 10/24/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated November 25, 2014, (reference 01) which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone hearing originating from Des Moines, Iowa was scheduled and held on December 30, 2014. The claimant participated personally with no additional witnesses. The employer, L A Leasing, Inc., participated by Colleen McGuinty, Unemployment Benefits Administrator and Joyce Moore, On-Site Manager at RockTenn. No exhibits were admitted into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant began employment on September 18, 2013, with L A Leasing, Inc. His first day of the most recent assignment with RockTenn began on June 2, 2014. He last worked there on October 16, 2014.

On October 16, 2014, RockTenn released the claimant from an assignment as a laborer. On-site manager, Joyce Moore, called the claimant into her office from his work on the work-line. Ms. Moore told the claimant his assignment ended that day due to poor performance. In September 2014, Ms. Moore told the claimant that he was not completing his duties as assigned and he could lose his job at some future date if his performance did not improve. RockTenn Co-Supervisor Keith Hill was present at the September meeting.

On October 16, 2014, after informing him that his assignment had ended, Ms. Moore told the claimant to collect his personal belongings and leave the premises of RockTenn. Ms. Moore observed the claimant as he was leaving the worksite. During that time, he attempted to return to the work floor against her direct advice, he made statements about damaging fellow employees' vehicle windows, he appeared angry, and threw objects. The claimant's behavior at

RockTenn was conveyed to Ms. McGuinty via e-mail from a RockTenn member of management.

Mr. Harper left the premises and did not return after October 16, 2014. He did not call or contact RockTenn or L A Leasing to see if future assignments were available.

Ms. McGuinty, Unemployment Benefits Administrator, learned of the claimant's conduct after receiving an e-mail from RockTenn managerial staff. Ms. McGuinty investigated the situation and obtained witness statements regarding the claimant's behavior on October 16, 2014. On November 7, 2014, Ms. McGuinty issued a letter to the claimant advising him that he was discharged from employment with L A Leasing, Inc., and he was no longer eligible for re-employment due to violation of company policy regarding violence in the workplace.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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).

There is no dispute that the claimant was discharged from employment with L A Leasing. The issue is whether the discharge was for misconduct not attributable to the employer.

In this matter, evidence established that the claimant was discharged for acts of misconduct on October 16, 2014, when he violated the employer's policy concerning violence in the workplace. The claimant signed a document regarding the terms of the employer's policy against violence in the workplace in September 2013. The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989).

Threatening to cause extensive damage to the personal property of co-workers is behavior that an employer does not need to accept even if no prior warning about such behavior was issued. The employer presented significant and credible evidence that the claimant threatened to damage employee property on the worksite. The claimant's conduct was in disregard of the standards of behavior which the employer had a right to expect. Making such a threat is misconduct even without prior warning. Disqualification for a single misconduct incident must be a deliberate violation or disregard of standards of behavior which employer has a right to expect. *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991).

The administrative law judge finds the testimony of on-site manager Joyce Moore to be more credible than that of the claimant regarding his behavior after being told his assignment had ended. Ms. Moore's testimony was supported by witness statements of co-workers regarding the claimant's behavior on the date at issue. The claimant's testimony was somewhat evasive when asked directly about what he did on October 16, 2014.

The claimant's behavior on October 16, 2014, as witnessed by several co-workers and a supervisor, was insubordinate. He attempted to return to the work area against a supervisor's directive. He also refused to sign documents regarding the ending of his assignment due to performance.

The claimant's behavior on October 16, 2014, which brought about the discharge, constitutes misconduct because his behavior violated the employer's company policy regarding violence in the workplace, of which he was aware, and because he was insubordinate. The administrative law judge holds that the claimant was discharged for misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated November 25, 2014, (reference 01) that the claimant is ineligible to receive unemployment insurance benefits, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/css