

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS L HULL
Claimant

APPEAL NO. 10A-UI-06061-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AADG INC
CURRIES-GRAHAM
Employer

OC: 03/14/10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 16, 2010, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on July 8, 2010. Claimant participated and was represented by Nicholas Larson, Attorney at Law. Employer participated through employee relations manager Dan McGuire. Subpoenaed witnesses Patrick McGowan and Patricia Gealow participated.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full time as a production laborer from 1984 and was separated from employment on March 19, 2010. On March 16 claimant engaged in an altercation with coworker Rick Pierce after Pierce opened a door to let cold air in that caused paint drips, which was a quality control concern. Both Gealow and McGowan observed claimant throw cardboard at Pierce and McGowan heard claimant yell at Pierce that he could “kick his ass.” Gealow heard both claimant and Pierce yell at each other but no one heard Pierce curse except claimant. Employer interviewed claimant and Pierce, Gealow, McGowan, and witnesses Andy Deroose, Brad Nuehring, Bob Buttjer, and Troy Noland. Claimant had asked the lead person to intervene and did not poke his finger on Pierce’s chest.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for 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.

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.

Where a claimant participated in a confrontation without attempt to retreat, the Iowa Court of Appeals rejected a self-defense argument stating that to establish such a defense the claimant must show freedom from fault in bringing on the encounter, a necessity to fight back, and an attempt to retreat unless there is no means of escape or that peril would increase by doing so. *Savage v. EAB*, 529 N.W.2d 640 (Iowa App. 1995).

Employers generally have an interest in protecting the safety of all of its employees and invitees. While claimant may not have poked Pierce in the chest, he did throw cardboard at Pierce, which can reasonably constitute a threat of physical aggression, especially when coupled with a verbal threat that he could "kick his ass." Although he reported the concern to a supervisor, he did not step back and allow the supervisor to handle the situation or take it above that supervisor's head in the chain of command. The ALJ is cognizant of the claimant's frustration at the quality issues created by the cold wind on his work product; however, his reaction was not reasonable. Claimant's behavior was contrary to the best interests of employer and the safety of its employees, and is disqualifying misconduct even without prior warning. Benefits are denied.

DECISION:

The April 16, 2010 (reference 01) decision is affirmed. The claimant was discharged from employment for reasons related to job misconduct. Benefits are withheld until such time as the claimant works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css