

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN D BUNTON**  
Claimant

**APPEAL NO: 12A-UI-05439-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BURKE MARKETING CORPORATION**  
Employer

**OC: 04/08/12**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's May 1, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. His subpoenaed witnesses, Kim Wheeler and Shelby Bairey, testified on his behalf. Shelli Siebert, a human resource generalist, and Terry Ubben appeared on the employer's behalf. During the hearing, Claimant Exhibits A through E and Employer Exhibits One through Four were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in April 2009. He worked as a full-time pack room trainer. When the employer hired him, the claimant received a copy of the employer's policies. (Employer ExhibitTwo). The policy informs employees they can be disciplined or immediately discharged if they threaten, intimidate, coerce or interfere with other employees. (Employer Exhibit One.)

The claimant and M.C. had a confrontation in February 2012 when M.C. accused the claimant of failing to do his job satisfactorily. When Kim Wheeler, a supervisor, talked to M.C. in February, he told her that he was not afraid to kick the claimant's ass. M.C. was transferred to another department so he and the claimant did not have much contact.

On April 10, M.C. was assigned to work in the claimant's department. This area is very loud and employees wear ear muffs for protection. The claimant was coming down from off the stairs when he saw M.C. by a computer. (Claimant Exhibits A and D.) M.C. was looking at the computer and had his back to claimant. The claimant had to program the computer for the next job. He asked M.C. to move twice and when he did not move, he tapped M.C. on the shoulder

to move. M.C. moved and the claimant programmed the computer for the next job. When the claimant finished programming the computer, MC yelled to the claimant, "Why did you push me? Don't touch me." The claimant asked what was wrong with him and started walking away. M.C. was upset and pushed the claimant into a garbage can. The claimant did not say anything but started going to a supervisor's office to report the incident. An employee, H.P., radioed for a supervisor to come to the area after M.C. pushed the claimant against a garbage can.

The employer investigated the incident. A couple of employees reported that the claimant pushed M.C. away from the computer because he thought M.C. had changed the computer screen. (Employer Exhibit Four.) Based on its investigation, the employer concluded the claimant started the incident by pushing M.C. away from the computer screen and then got into M.C.'s face after he programmed the computer for the next job. The employer discharged both employees for violating the employer's code of conduct policy. (Employer Exhibit Three.). The employer discharged the claimant on April 16, 2012.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Only two people who were present for the April 10 incident, the claimant and Bairey, testified at the hearing. Since the employer relied on hearsay information from employees who did not participate at the hearing, the claimant's and Bairey's testimony as to what happened on April 10 must be given more weight than the employer's testimony. As a result, the findings of fact reflect the claimant's version of the April 10 events

The evidence establishes that because employees wear ear muffs, it is a practice to tap an employee on the shoulder when they rotate off a line or a job. While the claimant may have tapped M.C. harder than normal if he thought M.C. changed the computer screen, his testimony

that he tapped M.C. and did not push him is credible. Also, even though the human resource department did not know the history between the claimant and M.C., in February 2012 M.C. made a comment that he would kick the claimant's ass.

After the claimant programmed the computer, the evidence indicates M.C. started the confrontation again and pushed the claimant into a garbage can. The facts do not establish that the claimant committed work-connected misconduct on April 10. He may have used poor judgment when he failed to ignore M.C. after programming a job on the computer, but his actions do not establish that he intentionally violated the employer's code of conduct. Even after M.C. pushed him into a garbage can, the claimant did not say anything and walked away toward a supervisor's office.

The employer established business reasons for discharging the claimant, but the evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of April 8, 2012, the claimant is qualified to receive benefits.

**DECISION:**

The representative's May 1, 2012 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of April 8, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw