

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

COREY A KRIEGEL
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Appeal Number: 05A-UI-07271-DWT
OC: 06/12/05 R: 03
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Colonial Manor of Amana, Inc. (employer) appealed a representative's July 8, 2005 decision (reference 01) that concluded Corey A. Kriegel (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 2, 2005. The claimant participated in the hearing. Jeffrey Ritchie, an attorney, represented the employer. Rod Buch, the administrator; Andy Maas, the director of nursing; Heather Clay, a CNA; and Valerie Phillips, a CNA, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in February 2002. The claimant worked as a full-time cook. His supervisor was Peggy Coulson.

The claimant received a copy of the employer's written policy and standard of conduct policy. The employer's policy indicates the employer will not tolerate any form of harassment, verbal or physical. The employer's code of conduct policy indicates the employer will not allow any acts or threats of violence toward anyone on the employer's premises. The claimant understood the employer's policy.

In March 2003, the claimant received a written warning for engaging in a verbal confrontation with another employee. The claimant acknowledges he became upset with another employee but they resolved their differences shortly after the confrontation. The claimant understood that if the employer gave him two more warnings for using inappropriate language toward a co-worker, he would be discharged. The claimant did not receive any more written warnings after March 2003.

On June 16, 2005, the claimant was at work when his wife, who also worked for the employer, told him people from the Department of Human Services (DHS) were at their home. Both the claimant and his wife were very upset about this. The claimant told Coulson what was happening at his home and asked if he could leave work right away. Coulson told the claimant he could leave. As the claimant hurriedly left work, he was very upset. Although Clay and Phillips were outside when the claimant left and heard him make a comment, the claimant did not even notice these employees. Clay and Phillips understood that when the claimant left he said, "These f***\$# kids around here. You're f#\$###\$# with the wrong people. You're going to be in a world of hurt." The claimant did not direct his comments to anyone, and may have made some remarks to himself. The claimant did not talk to Phillips and Clay. The employees noticed that the claimant was very agitated. The employees reported the incident to the employer and told the employer they felt threatened by the claimant's comments and demeanor.

After the employer received the employees' report, the employer investigated. The employer concluded the claimant violated the employer's policy because he made threatening remarks and displayed intimidating behavior when he left work early on June 16.

On June 17, 2005, the employer informed the claimant he was discharged because he violated the employer's policy the day before. The claimant did not understand why the employer discharged him and became frustrated.

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence reveals that employees who saw the claimant leave work early on June 16 were frightened by his behavior and incorrectly concluded he had threatened them when he left work. The evidence does not, however, establish that the claimant intentionally threatened or intimidated the employees when he left work early on June 16. Instead, the claimant was very upset and did not even notice any employees when he left work. The claimant had one thing on his mind and that was to get home. Even though the claimant may have made the comment the employees reported to the employer, he did not make that comment to any of the employees. The claimant was upset and letting off "steam" by talking to himself. Based on the information the employer learned from employees on June 16, the employer established business reasons for discharging the claimant.

Even though the claimant had a warning in March 2003 for inappropriate language at work, there is no evidence of any problems of this nature after March 2003 until June 16. On June 16 when the claimant left work early, he did not intentionally or substantially violate the employer's code of conduct and he did not intentionally harass or threaten another employee. The claimant did not commit work-connected misconduct. Therefore, as of June 12, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

DECISION:

The representative's July 8, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of June 12, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs