

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JEREMIAH J CHRISTIE
Claimant

APPEAL NO: 18A-UI-06186-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TMONE LLC
Employer

OC: 07/30/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 1, 2018, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 20, 2018. The claimant participated in the hearing. Sierra Turner, Senior Payroll Administrator, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time agent for TMONE, LLC from August 21, 2017 to May 21, 2018. He was discharged following an incident on the call floor May 21, 2018.

On May 21, 2018, the claimant reported for work and another employee was sitting in the chair where the claimant usually sat. He asked her to move and she indicated she was instructed to sit there by a member of management. The claimant stated that is where he usually sat and told her she needed to move. The other employee said that is where she was told to sit. The claimant was upset and went to Director of Operations Dillon Hudson and asked if the employer had assigned seating. Mr. Hudson told the claimant the employer did not have assigned seating and stated the claimant should work from another desk. The claimant got loud and said, "It's all bullshit" and management should "do something." Mr. Hudson asked the claimant to stop his behavior but the claimant failed to do so and Mr. Hudson terminated the claimant's employment for using profanity and threatening language on the floor, in violation of the employer's policy. The claimant had not received any previous verbal or written warnings.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proving disqualifying misconduct. *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 substantial and 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).

While another employee was sitting where the claimant typically sat at work, the employer did not have assigned seating and the claimant should have found a different place to sit rather than causing a scene by yelling and using profanity. That said, however, although the claimant's behavior was inappropriate and unprofessional, it was an isolated incident of misconduct as he had not received any previous warnings for his attitude or behavior. Under these circumstances, the administrative law judge must conclude the claimant's actions do not rise to the level of disqualifying job misconduct, as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The June 1, 2018, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn