

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAMERON R MEHMEN
Claimant

APPEAL NO. 10A-UI-07139-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

RADA MFG
Employer

OC: 04/18/10
Claimant: Respondent (2R)

Section 96.5-2-a – Misconduct
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 12, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 9, 2010. Claimant participated. Employer participated by Shawn Thill, human resources manager; Brent Hobert, vice president of manufacturing; and Greg Freebury, second shift senior lead. The record consists of the testimony of Shawn Thill; the testimony of Greg Freebury; the testimony of Brent Hobert; the testimony of Cameron Mehmen; and Employer's Exhibits 1-6.

ISSUES:

Whether the claimant was discharged for misconduct; and
Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures kitchen cutlery and utensils at its facility in Waverly, Iowa. The claimant was hired on April 23, 2007, as a press operator on the second shift. He was terminated on April 20, 2010, for threatening another employer.

The incident that led to the claimant's termination occurred on April 15, 2010. The claimant and another employee—Belal—had engaged in some horseplay earlier in the shift while in the break-room. The claimant felt that Belal and another employee were talking about him and attempting to irritate him. At the supper break, the claimant wanted to leave the premises and get something to eat. When he tried to leave the parking lot, Belal walked slowly across the one exit, which further irritated the claimant. When he came back from break, he told another employee—Matt—to tell Belal that the next time he did that he (the claimant) was going to run Belal over. The claimant did not speak directly to Belal and involved Matt, who he described as a mutual friend.

The claimant had had prior problems with verbal outbursts and displays of temper. On May 27, 2009, the claimant was informed that he was being given a formal supervisory referral to the Employee Assistance Program for anger management. (Exhibit 4). The claimant was told that this was, in effect, a last chance agreement. The claimant was also told that if he had problems with any employee, he was to immediately contact his supervisor.

The claimant did not inform his supervisor of the problem between him and Belal until after he had made the threat and had involved Matt in the dispute. The employer has a zero tolerance for threats and intimidating and harassing behavior in the workplace.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In *Henecke v. IDJS*, 533 N.W.2d 573 (Iowa App. 1995), the Iowa Court of Appeals stated that an employer has the right to expect decency and civility from its workers. An employer can reasonably expect that an employee will not use words or body language to threaten another employee. The employer has the burden of proof to show misconduct.

The claimant in this case acknowledged that he had threatened to run another employee over with his vehicle. He said that he did not mean it and would not have actually run this other employee over. The difficulty with the claimant's statement, however, is that he had had several previous warnings for temper outbursts and displays of anger. His conduct so concerned his employer that the claimant was required to attend anger management classes through his employer's assistance program. In addition, the claimant was told that he was to contact his supervisor immediately if he was having problems with another employee. The claimant knew that he had to bring his anger under control or he would lose his job. Despite this knowledge, he elected to threaten another employee with whom he was having a dispute and involve other employees without using the prescribed procedure for resolving his issue with that employee. The employer's testimony established that other employees were fearful of the claimant. Threats of violence are something that employers must take seriously and the claimant must bear the consequences of his choice of words and actions. Misconduct has been established. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue is remanded to the claims section for determination.

DECISION:

The decision of the representative dated May 12, 2010, reference 01, is reversed. 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. The overpayment issue is remanded to the claims section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs