

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**WILLIAM D JONES**  
Claimant

**All ACQUISITIONS LLC**  
Employer

**APPEAL 18A-UI-11388-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/21/18**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 21, 2018 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for engaging in conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephonic hearing was held on December 17, 2018. The claimant, William D. Jones, participated. The employer, All Acquisitions, L.L.C., did not register a telephone number at which to be reached and did not participate in the hearing.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a gel coater, from sometime in 2015 until October 23, 2018, when he was discharged. The final incident leading to claimant's discharge involved claimant getting into an altercation with a female co-worker. The co-worker came up and started yelling and screaming and using profanity in claimant's work station. Claimant endured this for between ten and fifteen minutes before he ultimately responded with similar behavior. Claimant was reprimanded the day this occurred, and then he was discharged for the incident one week later. Claimant's co-worker was not reprimanded after this occurred. A similar incident happened previously between claimant and a different female co-worker. In that instance, claimant was disciplined and his co-worker was not.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if

the employer was fully within its rights to assess points or impose discipline up to or including discharge for the incident under its policy.

In this case, the employer did not participate in the appeal hearing or submit any written statements in lieu of in-person participation. Claimant alleges he was treated differently from his co-workers who engaged in identical objectionable behavior. Even though the claimant may have yelled and screamed at work, since the consequence was more severe than other employees received for similar conduct, the disparate application of the policy cannot support a disqualification from benefits. The employer has not met its burden of proving the claimant was discharged from employment for disqualifying misconduct. Benefits are allowed, provided he is otherwise eligible.

**DECISION:**

The November 21, 2018 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn