

**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**

**MIKE S MARTIN
705 S 10th ST
BURLINGTON IA 52601**

**ALANIZ LLC
425 N IRIS ST
PO BOX 799
MOUNT PLEASANT IA 52641-7299**

**ELIZABETH NORRIS
ATTORNEY AT LAW
430 IOWA AVE
IOWA CITY IA 52240-1810**

**Appeal Number: 06A-UI-01138-AT
OC: 12-04-05 R: 04
Claimant: Appellant (2)**

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:

Mike S. Martin filed a timely appeal from an unemployment insurance decision dated January 23, 2006, reference 03, which disqualified him for benefits. After due notice was issued, a telephone hearing was held February 15, 2006, with Mr. Martin participating and being represented by Elizabeth Norris, Attorney at Law. Pauline Martin testified on his behalf. Production manager Rodney Stewart, production supervisor Matt Horton and human resources director Kristy Ensminger participated for the employer, Alaniz, LLC. Claimant Exhibit A and Employer Exhibit One were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Mike S. Martin was employed by Alaniz, LLC from February 24, 2005 until he was discharged on or about July 15, 2005. He worked full time picking up boxes. Mr. Martin had been hired through Hope Haven. A job coach accompanied him during his first two weeks on the job.

On or about July 15, 2005, a female co-worker accused Mr. Martin of having threatened to kill her. He was discharged as a result of this accusation.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with his employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof. See Iowa Code section 96.6-2. The employer elected not to call the complaining witness to testify in the hearing, even though the administrative law judge pointed out that the employer's other evidence was only hearsay. Mr. Martin denied under oath making the statement. Mr. Horton testified that Mr. Martin had acknowledged making the statement in an interview in which he took notes. The notes, part of Exhibit One, do not corroborate that testimony. The administrative law judge concludes that the employer has not established by a preponderance of the evidence that Mr. Martin indeed threatened to kill his co-worker. No disqualification may be imposed based upon the evidence in this record.

DECISION:

The unemployment insurance decision dated January 23, 2006, reference 03, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

kkf/kjw