

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MORTEIN V SERCY
Claimant

OLD DOMINION FREIGHT LINE INC
Employer

APPEAL 15A-UI-10570-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/23/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 11, 2015, (reference 03) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on October 5, 2015. Claimant participated. Employer participated through service center manager, Marty Pudlowski. Employer's Exhibits 1 and 2 were received.

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 as a dock worker from October 3, 2014, and was separated from employment on May 27, 2015, when he was terminated.

On May 22, 2015, claimant was loading freight onto a trailer when a co-worker began loading freight onto the same trailer even though he was not supposed to do so. Claimant had previously complained to his supervisors about his co-worker acting in a similar manner. However, the situation had not improved. Claimant and his co-worker got into a verbal argument. Claimant told another employee, Frank, that he was going to "fucking kill" the co-worker he had argued with.

When Pudlowski learned about the incident the next day, he began an investigation. Claimant admitted to making the statement, and Pudlowski terminated his employment on May 27, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

Employer has an interest and duty in protecting the safety of all of its employees. Claimant's threat of physical aggression was in violation of commonly known acceptable standards of work behavior. Even if claimant's co-worker was bothering him and management did nothing about it, claimant's conduct was not justified. The threat is misconduct even if it was not made directly to the co-worker. Claimant's behavior was contrary to the best interests of employer and the safety of its employees and is disqualifying misconduct even without prior warning.

DECISION:

The September 11, 2015, (reference 03) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Decision Dated and Mailed

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