

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JORDAN D CRAVER
Claimant

VERMEER MANUFACTURING CO INC
Employer

APPEAL 18A-UI-09361-H2
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 07/22/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 28, 2018, (reference 01) that denied benefits. The parties were properly notified about the hearing. An in person hearing was held on September 25, 2018. Claimant participated. Employer did not participate. Official notice was taken of agency records.

ISSUE:

Was the claimant discharged due to job connected misconduct sufficient to disqualify him from receipt of unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a welder beginning on June 4, 2012 through August 7, 2018, when he was discharged.

The claimant was at a start-up meeting on August 3, 2018. During the meeting the employees were talking about how many of their coworkers were still off work due to the recent tornado. Claimant said the 175 employees who were still off work were home jacking around. When he made the comment, he made a motion in the air with his hand up by his head like a tornado circling around. On August 6, he was called into a meeting with his direct supervisor Matt Rustia, and Cornie Van Walbeek, human resources representative. The claimant was told that he had made an inappropriate hand gesture referring to a male masturbating during the meeting. The claimant admitted making a hand gesture but said it was a tornado type gesture not the male masturbation gesture.

At hearing claimant denied any inappropriate gesture. The employer did not provide any witnesses who allegedly saw claimant make the gesture. No witness statements were provided to the fact-finder or for the hearing. The employer representative who participated in the fact-finding interview was not present when the meeting took place on August 3, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. The claimant denies making any inappropriate gesture. The employer offered nothing to dispute his testimony. Under these circumstances the employer has not met their burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The employer simply has not established any act of misconduct on the claimant's part on August 3, 2018. Benefits are allowed.

DECISION:

The August 28, 2018, (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs