

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VERLYN W SCHULDT JR
Claimant

STREAM INTERNATIONAL INC
Employer

APPEAL 16A-UI-08047-CL
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/19/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 12, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a discharge based on misconduct. The parties were properly notified about the hearing. A hearing was held in Sioux City, Iowa on September 21, 2016. Claimant participated. Employer participated through human resource manager Staci Albert and senior operations manager Matt Determan. 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 began working for employer on December 18, 2006. Claimant last worked as a full-time customer support professional. Claimant was separated from employment on June 17, 2016, when he was suspended and later terminated.

Employer has a policy prohibiting conduct that creates a hostile or intimidating environment. Claimant was aware of the policy.

On June 17, 2016, claimant became upset after learning he did not receive a promotion. Claimant was in the production bay, where 10 to 12 other employees were present. Claimant said he was upset about not receiving the promotion and then stated, "I'm going to have to take care of things, like they did in Orlando." At least three of claimant's co-workers heard him make the statement and were astounded. A mass shooting had taken place in Orlando, Florida within the previous week.

Claimant did not seriously intend to conduct a mass shooting in the work place. He was feeling bad about his life circumstances at the time. Claimant knew making the statement was wrong.

Shortly thereafter, a co-worker reported claimant's statement to the team lead. The team lead gathered written witness statements from three employees who overheard the comment. The team lead then reported the situation to senior operations manager Matt Determan. Determan took claimant into a room asked him if he made the statement. Claimant stated he did and apologized profusely. Claimant stated he did not intend to hurt his co-workers. Employer called law enforcement who escorted claimant from the property.

Employer terminated claimant on June 21, 2016, for creating a hostile or intimidating work environment.

Claimant had never been previously warned for similar conduct.

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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant told his co-workers he was upset about not receiving a promotion and that he should take care of the problem. Claimant then referenced one of the worse mass shootings in the history of the United States that had just occurred that week. Although claimant asserts that he actually stated he wished he was a victim of the mass shooting in Orlando, I do not find his testimony convincing in regard to that issue. Although I do find claimant's testimony that he did not seriously intend to carry out a mass shooting in the workplace credible, his employer and co-workers had no way of knowing that on June 17. Claimant made the statement in violation of employer's policy prohibiting actions creating a hostile and intimidating work environment and in deliberate disregard of employer's interest in maintaining a safe workplace.

Employer has established claimant was terminated for job-related misconduct.

DECISION:

The July 12, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant is deemed eligible.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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