

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**MICHAEL E GALLENTINE**  
Claimant

**APPEAL NO. 06A-UI-05744-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERICAN GAMES INC**  
Employer

**OC: 04/30/06 R: 01  
Claimant: Appellant (1)**

Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 18, 2006, reference 01, decision that held the claimant ineligible to receive unemployment insurance benefits. After due notice was issued, a hearing was held in Council Bluffs, Iowa on October 10, 2006. The claimant appeared and testified in his own behalf. Appearing on behalf of the employer was Ms. Lynn Corbeil, Attorney for Johnson & Associates. Appearing as witnesses were Craig Kohn and Ms. Kari Hockenmeier. Exhibits One through Four were received into evidence.

**ISSUES:**

Did the claimant voluntarily leave employment for reasons that are disqualifying? Was the claimant discharged for misconduct in connection with the work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record the administrative law judge finds Mr. Gallentine was employed by American Games, Inc. from April 1991 until December 28, 2005 when he was suspended pending investigation. The claimant worked as a full time machine operator and was supervised by Mr. Dave Lyons.

A decision was made to terminate Mr. Gallentine based upon reports by company employees that he had engaged in threatening behavior towards another employee on or about December 28, 2005. Mr. Gallentine had returned from a medical leave of absence and was working in the proximity of a female individual who was the daughter of a woman to whom Mr. Gallentine had a previous personal relationship. In the past allegations of domestic assault had been made by that individual against the claimant.

On the day in question the claimant was observed speaking in a loud and what appeared to be menacing manner to the young woman. The matter was reported to the company by another woman who the claimant had previously had a personal relationship with. The company investigated and determined that other witnesses had also observed the incident and confirmed to the company that Mr. Gallentine was acting in what appeared to be a threatening and menacing manner.

Established company policy prohibits conduct that threatens, intimidates, or coerces other employees. (See Exhibit Three). Claimant was aware of the company policy. Mr. Gallentine had previously been suspended from work for a one-week period in December 2005 for threatening and intimidating behavior towards another employee. The claimant was aware that conduct of that nature could result in termination of employment. Mr. Gallentine had been referred and required to obtain counseling through the company's employee assistance program based upon his behavior in December 2005. While investigating the most recent complaint against Mr. Gallentine, it came to the attention of the company that additional assault charges had been filed against the claimant in an unrelated matter. The most recent charge potentially jeopardized a portion of the company's contract to supply printing for the State of Michigan because of gaming regulations. The employer also considered the charges to be a further indication of the claimant's propensity for threatening conduct.

It is the claimant's position that he was merely speaking in an apologetic manner to the young woman and that he was not acting in a menacing and intimidating manner. It is the claimant's position that he was speaking loud because the young woman had a hearing problem.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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).

In this case Mr. Gallentine was discharged based upon a final incident where he was observed yelling in what appeared to be a menacing manner at a female employee at the employer's location during working hours. The female employee in question was the daughter of a woman who the claimant had a previous personal relationship with. An attempt had previously been made to arrest the claimant for domestic assault against the young woman's mother.

Mr. Gallentine had previously been warned and sent to the employee assistance program because of threatening and intimidating behavior towards another employee on the job. (See Exhibit Four). The claimant was made aware at that time that conduct of that nature could result in his termination of employment. The claimant was also aware of the company policy that prohibited threatening or intimidating behavior. Upon being informed of the most recent incident, the company acted reasonably in suspending Mr. Gallentine pending a full investigation. Upon interviewing other witnesses, the company determined that the claimant had, in fact, been acting in a menacing manner towards a female employee and that other observers corroborated that the claimant's conduct and demeanor was menacing and threatening. The employer thus received corroborating statements from other individuals about Mr. Gallentine's conduct.

Although the administrative law judge is aware that it is Mr. Gallentine's position that he was having an apologetic conversation in a loud voice, the administrative law judge nevertheless finds that the employer has sustained his burden of proof through a preponderance of the evidence in establishing the claimant's conduct was a disregard of the employer's interests and reasonable standards of behavior. Based upon the company's established policy, the previous warning that had been served upon the claimant and the most recent incident, the employer had no other reasonable alternative but to discharge the claimant.

For the above stated reasons, the administrative law judge is of the opinion that the employer has sustained its burden of proof in showing that the claimant's discharge took place under disqualifying conditions.

**DECISION:**

The agency representative's May 18, 2006, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment insurance benefits until he has worked and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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