

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRAD J SHAFFER**  
Claimant

**APPEAL NO. 09A-UI-01851-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TASS ENTERPRISES INC**  
Employer

**OC: 01/04/09 R: 02**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Brad Shaffer (claimant) appealed a representative's January 28, 2009 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Tass Enterprises (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 26, 2009. The claimant participated personally. The employer was represented by Ira Sanders, Hearings Representative, and participated by Lori Peninger, Breakfast Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on or about April 10, 2008, as a full-time crew member. On January 1, 2009, the breakfast manager was handing out job duties. The claimant did not want to take one because a previous manager told him to stay at his register. The breakfast manager took the paper with the duty written on it to the claimant. Through clenched teeth the claimant said, "I want to fucking punch her." This was said loud enough for employees to hear. The breakfast manager sent the claimant home and contacted the employer. She was frightened. On January 5, 2009, the employer terminated the claimant for threatening violence.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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.

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). "[A]n employer has the right to expect decency and civility from its employees." The court found substantial evidence of offensive words and body language in the record of the case. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). A threat to make it miserable for the employer is sufficient to establish misconduct. Myers v. Employment Appeal Board, 462 N.W.2d 734 (Iowa App. 1990).

An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's right by verbally assaulting the breakfast manager. The claimant's disregard of the employer's interests is misconduct. As such he is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's January 28, 2009 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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