

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES G MERRILL
Claimant

DIXON CONSTRUCTION COMPANY INC
Employer

APPEAL 19A-UI-06261-S1-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 12/30/18
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

James Merrill (claimant) appealed a representative's July 30, 2019, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after the claimant's separation from work with Dixon Construction Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 29, 2019. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 April 1, 1989, as a full-time crane operator. He signed for receipt of the employer's handbook. The employer did not issue the claimant any warnings during his employment.

The employer hired a younger worker that the claimant sometimes transported to and from work. The claimant was concerned that the younger worker was not a good fit with the company. The employer planned to make the claimant a foreman and

Once, the claimant gave the younger employee a ride home in his personal vehicle and was stopped by law enforcement. Law enforcement found marijuana under the younger employee's seat. The drugs did not belong to the claimant and the younger employee denied possession. The claimant was charged and taken to jail for having marijuana in his vehicle.

On June 27, 2019, the claimant was in the midst of a divorce and losing his home. The claimant was driving and the younger employee was late getting in the company truck. On the drive to work, the younger employee lit a cigarette. The claimant told the younger employee to put the cigarette out. Smoking in a company vehicle was against company rules. The younger

employee threw the cigarette out the window. He got close to the claimant and started screaming things that aggravated the claimant. The younger employee wanted to know who the claimant thought he was. The claimant punched the younger employee in the nose with a closed fist.

On June 27, 2019, the claimant notified the employer of his actions. On June 27, 2019, the employer terminated the claimant for punching a co-worker.

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, 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 claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The

claimant's actions were volitional. He intentionally punched a co-worker in a company vehicle while on company business (transporting a co-worker). When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct. Benefits are denied.

DECISION:

The representative's July 30, 2019, 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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs