

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**GARY L CORKERY**  
Claimant

**CITY OF INDEPENDENCE**  
Employer

**APPEAL 21A-UI-04633-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/11/20  
Claimant: Appellant (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Gary Corkery (claimant) appealed an Iowa Workforce Development January 28, 2021, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with City of Independence (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 12, 2021. The claimant was represented by Robert Murphy, Attorney at Law, participated personally. Rick Rasmussen, former co-worker, testified on behalf of the claimant. The employer was represented by Holly Corkery, Attorney at Law, and participated by Al Roder, City Manager. The administrative law judge took official notice of the administrative file.

**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 worked for the employer from February 26, 1999, through September 30, 2020, as a full-time streets department worker. He was a former union steward. He first signed for receipt of the employer's handbook on June 28, 1999. The claimant signed for each updated handbook. He last signed for a handbook on October 24, 2019. The employer's policies prohibited employees from engaging in threatening conduct.

A co-worker, Weber, was working different hours than his co-workers after speaking to the city manager. The claimant did not agree with this or the way Weber was using his sick leave and thought Weber was getting special treatment. The claimant and other co-workers complained to the supervisor about Weber's use of sick leave and change of hours. The employer told the claimant it would do nothing about his complaints.

On April 1, 2020, the claimant and Weber were in the breakroom at work with Brad Ash and Rick Rasmussen. The claimant did not know that Weber recorded the claimant's conversation. The claimant said, among other things, "You're a selfish little fucking prick. Go fuck yourself.

I'm about sick of your fucking bullshit. If I were your boss, I'd fire your fucking ass. I'd shove your fucking cellphone up your ass on the way out the door. You're going to have a long fucking three years with me. You're nothing but a backstabbing little fucker in my eyes. If I thought I'd get away with it I'd bust your fucking legs. Same goes for you, too. Ash, you cock sucker. Think your actions through, Weber. Think them through. I'm going to make you a miserable motherfucker for the next three years if you don't change your fucking attitude, plain and simple".

On Friday, September 18, 2020, the claimant made comments to Weber. The claimant called Weber a "stupid little fucker" and a "fucking idiot". Weber felt threatened. The claimant thought he was using his words to "unite" the claimant with the rest of the workers and make him stop his behavior. On September 18, 2020, Weber complained to the employer about the claimant's behavior. He felt threatened by the claimant.

The claimant called in sick on September 21 and 22, 2020. On September 23, 2020, the employer placed the claimant on administrative leave pending investigation. The employer listened to Weber's recording. It interviewed and recorded the statements of Mr. Weber, Mr. Corkery, Mr. Ash, and Mr. Rasmussen.

On September 30, 2020, the employer held a due process hearing. The claimant attended with his union representative. The claimant listened to the recording of April 1, 2020, identified his own voice and confirmed that he made the statements on the recording. The claimant admitted instigating a confrontation with Mr. Weber and admitted making threats to Weber. He did so to get him to think. The employer terminated the claimant on October 1, 2020 for violation of the employer's policies.

The claimant filed for unemployment insurance benefits with an effective date of October 11, 2020. His weekly benefit amount was determined to be \$493.00. The claimant received no state unemployment insurance benefits or Federal Pandemic Unemployment Compensation after October 11, 2020.

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

For the reasons that follow the administrative law judge concludes the claimant is not eligible to receive unemployment insurance benefits.

Iowa Code section 96.5(2)b and c provide:

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:

b. Provided further, if gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid

to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

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).

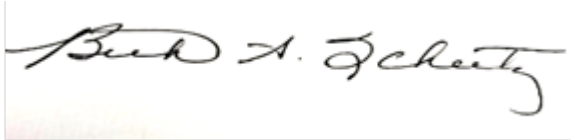
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. He intentionally threatened a co-worker in violation of the employer's policy and perhaps in violation of Iowa Criminal Code Sections 708.1 and 708.7. He testified that he threatened a co-worker. He admitted he threatened bodily harm. 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.

Should the parties have information showing gross misconduct as defined above in Iowa Code section 96.5(2)c, they should provide that information to the Agency immediately for an initial investigation and decision.

**DECISION:**

The representative's January 28, 2021, 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.

Should the parties have information showing gross misconduct as defined above in Iowa Code section 96.5(2)c, they should provide that information to the Agency immediately for an initial investigation and decision.

A handwritten signature in black ink that reads "Beth A. Scheetz". The signature is written in a cursive style with a long horizontal stroke at the end.

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Beth A. Scheetz  
Administrative Law Judge

April 15, 2021  
Decision Dated and Mailed

bas/scn