

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**NATHAN E EASTMAN**  
Claimant

**MENARD INC**  
Employer

**APPEAL 17A-UI-11697-JP**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/22/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 13, 2017, (reference 04) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. An in-person hearing was held on March 21, 2018 at 3420 University Avenue, Suite A, in Waterloo, Iowa. Claimant participated. Employer participated through assistant plant manager Christopher Brennan.

**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 was employed full-time as a forklift operator from August 4, 2017, and was separated from employment on October 14, 2017, when he was discharged.

The employer has a strict policy that prohibits fighting/violence. The policy provides any violation will result in discharge. Claimant was aware of the policy.

On October 14, 2017, claimant got in an argument with a coworker. The coworker had been telling claimant to do something, but he was refusing to do what the coworker was telling him to do. The coworker and claimant were yelling at each other. An industrial technician (Eugene) came to where the coworker and claimant were arguing. Claimant and Eugene then went to talk to the assistant plant manager (Mr. Brennan). Claimant and Eugene approached Mr. Brennan on the catwalk. Claimant and Eugene were facing Mr. Brennan and they asked who was in charge. Mr. Brennan told them that when he was not in the building, Eugene was in charge. Eugene and claimant then turned and got face to face with each other. Claimant's back was facing Mr. Brennan and he was partially blocking Mr. Brennan's view of Eugene's body, but not Eugene's face. Eugene told claimant to get back to work "b\*\*ch." Mr. Brennan then observed claimant slap Eugene in the face (cheek). Mr. Brennan told claimant they cannot have that and he was discharged. Mr. Brennan did not see Eugene lick claimant. Mr. Brennan had a clear view of Eugene's face and testified he would have been able to see Eugene lick claimant's face if it happened.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related misconduct. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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). Where a claimant participated in a confrontation without attempt to retreat, the Iowa Court of Appeals rejected a self-defense argument stating that to establish such a defense the claimant must show freedom from fault in bringing on the encounter, a necessity to fight back, and an attempt to retreat unless there is no means of escape or that peril would increase by doing so. *Savage v. Emp't Appeal Bd.*, 529 N.W.2d 640 (Iowa Ct. App. 1995).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer's policy prohibiting fighting/violence is reasonable.

Claimant's argument that Eugene licked his face before he slapped him is not persuasive. Mr. Brennan credibly testified that he was able to observe Eugene's face during the confrontation. Mr. Brennan further credibly testified that he did not see Eugene lick claimant's face. It is also noted that claimant did not attempt to retreat from the confrontation and allow the assistant plant manager to intervene in the confrontation.

The employer has presented substantial and credible evidence that claimant slapped Eugene after Eugene told him to get back to work "b\*\*ch." The employer has a duty to protect the safety of its employees. Claimant's conduct of slapping Eugene was contrary to the best interests of the employer and the safety of its employees. Furthermore, the employer presented substantial and credible evidence that claimant's conduct (slapping Eugene) was a "deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees[.]" Iowa Admin. Code r. 871-24.32(1)a. Claimant's slapping of a coworker is misconduct even without prior warning. Benefits are denied.

**DECISION:**

The November 13, 2017, (reference 04) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs