

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON R SASSMAN
Claimant

APPEAL NO. 07A-UI-11298-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MEYERS TREE SERVICE INC
Employer

**OC: 11-04-07 R: 02
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 27, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 20, 2007. The claimant did participate along with his witness, Andrea Crawford. The employer did participate through Dwayne Meyers, President, and Shane Freeman, Ground Foreman. Claimant's Exhibit A was received. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a ground worker, full-time, beginning in August, 2006, through November 1, 2007, when he was discharged.

Prior to October 22, the claimant was considered by the employer to be an excellent employee. Beginning on October 22, the claimant began to exhibit bizarre, unexplainable behavior at work, including talking to himself or some other unseen person, mumbling, unexplained lack of concentration, disorientation, and irritability. Mr. Meyers knew that the claimant was taking medication for a mental health disorder, bi-polar syndrome. Mr. Meyers also knew that claimant had a past history of drug abuse and suspected that the claimant might be using drugs. Mr. Meyer was also aware that the claimant had a past history of violence when he was using drugs. The claimant was late to work on both Monday October 22, and Tuesday October 23. He had no history of tardiness prior to these incidents. On October 23, the claimant mistakenly, and unintentionally according to Mr. Meyers, released an outrigger on the truck while the boom was still up in the air, causing the truck to tip over and sustain substantial damage.

The employer did not work on October 24. The claimant returned to work on October 25, and his behavior remained as bizarre as it had been on October 22 and 23.

The claimant returned to work on Friday and was continuing to act very strangely. Mr. Meyers confronted the claimant and asked him if he were taking drugs. While Mr. Meyers indicates that the claimant said he was not “doing meth,” he did indicate that he smoked marijuana and would continue to do so. Mr. Meyers asked him if he called in his insurance company to drug test everyone, if the claimant would pass. The claimant indicated he needed four days and he could pass any drug test. At hearing, the claimant denied using methamphetamine or any illegal drug.

On Saturday morning at approximately 6:00 a.m., the claimant placed a call to his coworker Shane Freeman. During the phone call the claimant spoke erratically at times telling Mr. Freeman that he was going to take care of him, or protect him, and then at the end of the conversation threatening to “bury him.” Mr. Freeman felt that the claimant was threatening to kill him, and knowing the claimant’s past history for violence, he called Mr. Meyers immediately to report the incident.

On that same day the claimant also called and threatened Mr. Meyer’s wife and two sons in separate phone calls. Mr. Meyers called the police to report the incident and also called the claimant’s girlfriend, Andrea Crawford. Ms. Crawford indicated that the claimant had been exhibiting signs of a manic episode, but she thought his behavior was limited to home. She took the claimant to Broadlawn’s Hospital for treatment. The claimant was given a prescription and released. He was admitted again the following day for additional treatment when his new prescription was not helping. Eventually, because no room was available for him at Broadlawn’s, the claimant was transferred to Jennie Edmondson Hospital in Council Bluffs. The claimant was hospitalized until November 1. Since his medication has been adjusted, the claimant is no longer exhibiting bizarre or strange behavior. The claimant alleges that the whole reason for his out-of-the-ordinary behavior during the week beginning October 22 was because his bi-polar medication needed to be adjusted.

Mr. Meyers and Mr. Freeman were both fearful of what actions the claimant may take to harm them or their families after his phone calls the weekend of October 27 and 28. Mr. Meyers spoke to Ms. Crawford on October 30 or 31 and told her that because of the way the claimant had behaved, including the threatening phone calls, his employment was terminated. Ms. Crawford told the claimant he had been discharged from his employment when she picked him up from the hospital on November 1.

While the claimant has admitted hospital records that indicate the claimant was tested for drugs in his system, there is no evidence of any test results. The claimant contends that the entire reason he was behaving so out of character, was because his medication for his bi-polar disorder needed to be adjusted. The claimant contends that he asked Mr. Meyers for permission to be off work on Monday or Tuesday to seek medical treatment but was denied. Mr. Meyers denies that the claimant ever asked for sick time and points out that in the past the claimant had called in when he was sick with no problem and that the claimant did not work on Wednesday, October 24, and did not seek medical treatment at that time.

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

The claimant clearly has a history of illegal drug use and a history of angry, violent behavior. The administrative law judge finds the employer's testimony credible that the claimant did threaten Mr. Meyers, his family, and Mr. Freeman. Under the circumstances the administrative law judge concludes that the employer could reasonably feel threatened by the claimant based on the claimant's actions and words and the employer's discharged to protect himself and his other employees was reasonable. However, the administrative law judge is unable to conclude that the cause of the claimant's behavior was due to illegal drug use. Any actions taken by the claimant due to illegal drug use would require the claimant to suffer the consequences of those actions. There is no evidence to support a conclusion that the claimant's behavior stemmed from illegal drug use. The administrative law judge finds that the claimant was behaving in such a strange manner because his bi-polar medication needed to be adjusted. The administrative law judge is convinced that the claimant did not ask for time off on Monday, October 22, or Tuesday, October 23, because Mr. Meyers would have given him time to seek treatment. The claimant's own failure to seek treatment on Wednesday, October 24, when he did not have to work, also indicates he had an opportunity to seek medical help but chose not to do so. The

very nature of claimant's illness that is, his bi-polar disorder, deprived him of the ability to make reasonable logical choices. The claimant did not know what he was doing or saying while at work the week of October 22 and during the weekend when he made threats against Mr. Meyers and Mr. Freeman. Under the evidence presented at the hearing, including no conclusive evidence of illegal drug use, the administrative law judge concludes that the claimant's actions were due to an improperly medicated mental health disorder and cannot be considered as "volitional misconduct" under the statute. While the employer may have had good cause to discharge the claimant, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Because the administrative law judge concludes no volitional misconduct was committed or established, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The November 27, 2007, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw