

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES S ZDANOWICZ
Claimant

APPEAL NO. 11A-UI-04302-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SMI COMPANY
SEEDORFF MASONRY INDUSTRIES
COMPANY**
Employer

**OC: 02/20/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

James Zdanowicz (claimant) appealed a representative's March 21, 2011 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Seedorff Masonry Industries Company (employer) for fighting on the job. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 27, 2011. The claimant participated personally. The employer participated by Allan Hermsen, Payroll Supervisor/Vice President, and Rick Burke, Plant Manager.

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 26, 2010, as a full-time laborer/machine operator. The claimant signed for receipt of the employer's handbook on November 1, 2004, during a previous period of employment. The employer issued the claimant a written warning on January 27, 2011, for breaking into the safety person's office with a co-worker. Items were missing from the office after the break in. The employer notified the claimant that further infractions could result in termination from employment.

On February 17, 2011, the claimant and the same co-worker engaged in an argument over medication. The two struck each other and the claimant threw a board, hitting the co-worker in the back. The employer terminated the claimant on February 18, 2011.

REASONING AND CONCLUSIONS OF LAW:

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

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). "[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). An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's right by physically and verbally assaulting a co-worker. 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 March 21, 2011 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/pjs