

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

QORNELL A WARDLAW
Claimant

APPEAL NO. 08A-UI-01284-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**INNOVATIVE INJECTION
TECHNOLOGIES INC**
Employer

**OC: 01/06/08 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 31, 2008, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 6, 2008. Claimant participated personally with Attorney Tom Duff. Employer participated by Lisa Buzzard, Human Resource Manager; Mike Jingst, Production Manager; and Tina Esquibel, Shift Supervisor. Exhibits One and Two were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 4, 2007.

Claimant was discharged on December 3, 2007 by employer because claimant called his supervisor on December 3, 2007. Claimant called the supervisor and accused her of sending someone to his house to break windows. Claimant was the victim of an attack which broke windows in claimant's house and automobile just minutes prior to the call. Claimant was loud and profane during the conversation. Claimant called from home after work hours. The supervisor was at work. Claimant was very upset and used profanity toward the supervisor. Claimant was calling to see if a certain coworker was at work. Claimant believed the coworker was the person who was breaking his windows. Claimant had reason to be in an aggravated state as a crime victim. Claimant was summoned to work that same morning to discuss his behavior. Claimant was upset at the meeting but did not use profanity or threaten anyone. Claimant did have a final warning on his record for work performance. Claimant had no warnings for intimidating conduct. Claimant has a naturally loud and aggressive voice which would easily be misconstrued as an angry voice.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning workplace intimidation and disruptive behavior. Claimant was aware of this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because this is an isolated instance of poor judgment. There are several extenuating factors which weigh heavily toward a finding that claimant did not intentionally violate the policy on disruptive behavior. First, claimant was a crime victim. Claimant immediately called work just after having his windows broke out. Claimant was in a very agitated state and not responsible for his aggressive verbal discourse. Second, claimant is just one of those people with a loud and harsh voice that seems to utter menace based solely on tone. That is his natural tone of voice. To prejudice claimant for his naturally abrasive tone of voice would be like prejudicing someone

for the color of their eyes. Nevertheless, claimant was inappropriate when calling his supervisor at work but the fact that he had just experienced a very traumatic event as a crime victim negates any intent to violate a known company rule. This is an isolated instance of poor judgment precipitated by a crime of violence to claimant's property. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated January 31, 2008, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css