

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

DEREK M EAKINS
Claimant

JOHN DEERE COMPANY
Employer

APPEAL 22A-UI-16260-DZ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 10/17/21
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Derek M. Eakins, the claimant/appellant, filed an appeal from the Iowa Workforce Development (IWD) August 9, 2022 (reference 02) unemployment insurance (UI) decision that denied REGULAR (state) UI benefits because of a July 20, 2022 discharge from work. The parties were properly notified of the hearing. A telephone hearing was held on September 15, 2022. Mr. Eakins participated personally. The employer did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the employer discharge Mr. Eakins from employment for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Eakins began working for the employer on February 18, 2002. He worked as a full-time welder. His employment ended on July 20, 2022.

Mr. Eakins wife also worked for the employer. On Friday, July 15, 2022, the employer terminated Mr. Eakins' wife employment. Mr. Eakins felt that the employer's action was wrong, discriminatory, and unjust. Mr. Eakins' wife had told him about her experiences with her manger and Mr. Eakins and his wife considered his wife manager to be discriminatory against her because she is a woman working in a majority-male field. Sometime in July 2022, Mr. Eakins' wife and Mr. Eakins filed a harassment/sex discrimination complaint against Mr. Eakins' wife's manager. Soon thereafter, things got better for Mr. Eakins' wife, but then things went back to the way they were.

Mr. Eakins went to his two-up manager to express his feelings. Mr. Eakins' two-up manager's workstation is a cubicle surrounded by other cubicles. Mr. Eakins went to his two-up manager's cubicle and began yelling and using profanity. Mr. Eakins yelled that the employer's termination of his wife' employment was discriminatory and unjust. Mr. Eakins called his wife's manager a

"spick" and yelled that he would hit his wife's manager if he ever saw the manager again. Mr. Eakins' manager and other managers heard Mr. Eakins yelling. They came to the area where Mr. Eakins and Mr. Eakins' two-up manager were and told Mr. Eakins to leave so he did not get into major trouble. Mr. Eakins did not stop, and he did not leave. After Mr. Eakins had said his piece, he left work.

Mr. Eakins returned to work later that day and asked to speak to his manager about his outburst earlier in the day. The employer told Mr. Eakins to wait. Mr. Eakins waited for a bit and then left before speaking to his manager because he realized that he was not in a good space yet to talk with his manager. The employer contacted Mr. Eakins' union and told the union that Mr. Eakins was locked out of the employer's work site pending the employer's investigation and a disciplinary hearing. When Mr. Eakins went to his union hall, his union representative relayed the employer's message about his lock-out and the pending investigation and disciplinary hearing. At some point after this, Mr. Eakins called his manager and his two-up manager and apologized for his behavior.

On July 20, the employer held a disciplinary hearing. Mr. Eakins, two representatives from his union, and two labor relations staff from the employer participated in the hearing. The employer reviewed the July 15 incident and noted that Mr. Eakins had used discriminatory language and had threatened violence against another employee. Prior to the July 15 incident, Mr. Eakins had no disciplinary record. Mr. Eakins' union representative asked the employer to not terminate Mr. Eakins' employment given his lack of a disciplinary record and the fact that Mr. Eakins' wife's employment had been terminated a few days before and terminating Mr. Eakins' employment would mean they would both be unemployed. The employer did not agree to the request. The employer terminated Mr. Eakins' employment.

Mr. Eakins testified in the hearing that his behavior on July 15 was not right and was unjustified. Mr. Eakins explained that his emotions got the best of him, and he made a mistake. Mr. Eakins argued that the employer could have and should have disciplined him, but not gone as far as terminating his employment given his lack of a disciplinary record.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Mr. Eakins from employment for job-related misconduct.

Iowa Code section 96.5(2)(a) and (d) provide, in relevant part:

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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of such the employee's contract of employment.

Misconduct is 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.

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.

The Iowa Supreme Court has held that this definition accurately reflects the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). The issue is not whether the employer made a correct decision in separating the claimant from employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, despite the employer's absence from the appeal hearing, the weight of the evidence establishes that Mr. Eakins engaged in disqualifying job-related misconduct. Mr. Eakins called his wife's manager a derogatory, racist slur, he threatened violence against his wife's manager, and he did so by yelling and ignoring the words of his manager and other managers to stop. Mr. Eakins admitting to using the racial, but he attempts to downplay his actions by calling his racist outburst a mistake. It is understandable that Mr. Eakins would be upset at the employer for terminating his wife's employment. However, Mr. Eakins engaged in misconduct when he responded to the employer's action by yelling a racist slur and threatening violence. Since Mr. Eakins engaged in disqualifying, job-related misconduct, benefits are denied.

DECISION:

The August 9, 2022 (reference 02) UI decision is AFFIRMED. The employer discharged Mr. Eakins from employment for job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Daniel Zeno
Administrative Law Judge

October 11, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to **file a petition for judicial review in District Court** within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de **presentar una petición de revisión judicial en el Tribunal de Distrito** dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.