

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

IZET OBIC

Claimant

APPEAL 19A-UI-09318-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASTERBRAND CABINETS INC

Employer

OC: 11/10/19

Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Izet Obic (claimant) appealed a representative's November 22, 2019, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from work with Masterbrand Cabinets (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 19, 2019. The claimant participated personally. The employer participated by Deborah Tyler, Human Resources Generalist. The employer offered and Exhibit One was received into evidence.

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 May 2, 2005, as a full-time boxer. The claimant signed for receipt of the employer's handbook on January 4, 2018. The handbook states that "engaging or threatening to engage in any type of physical altercation with anyone on company premises" may be grounds for immediate termination. The employer did not issue the claimant any warnings during his employment.

On October 31, 2019, the claimant engaged in an argument with a co-worker. The co-worker grabbed his own genitals and said "suck my dick". The claimant said, "If you do that again, I'll punch you in the face". Both employees were suspended on October 31, 2019, pending investigation. The investigation concluded on November 5, 2019, after the employer took three co-worker's statements. On November 7, 2019, the employer terminated the claimant for threatening violence. The co-worker involved in the incident was also terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not eligible for unemployment insurance benefits.

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 Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. He intentionally threatened to physically harm his co-worker. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's November 22, 2019, 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/scn