

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFERY JOHNSON
Claimant

APPEAL NO: 08A-UI-02150-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CORKERY INDUSTRIES LC
Employer

**OC: 12/23/07 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jeffery Johnson (claimant) appealed a representative's February 28, 2008 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Corkery Industries, L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 27, 2008. The claimant participated in the hearing and was represented by Beth Engels. Larry Corkery appeared on the employer's behalf. During the hearing, Employer's Exhibits One, Two, and Three were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 14, 2006. He worked full time as a machine operator at the employer's plastic processing facility on a rotating four-day schedule. His last day of work was February 5, 2008. The employer discharged him on that date. The stated reason for the discharge was threatening behavior toward another employee.

The claimant had not been scheduled to work on February 1, 2008. However, the person who was scheduled to work that day called in sick. As a result, the claimant's team leader attempted to call the claimant to come in to fill the shift. The team leader called the claimant's home at approximately 6:00 a.m., the normal shift start time, but was unable to reach the claimant.

The claimant was scheduled for and did report for work on February 2. When he came in, he confronted his team leader, shaking his fist in the team leader's face and yelling at him that the team leader was never to call the claimant on his day off again. The team leader reported this to Mr. Corkery, the business' president, on the next day both the team leader and Mr. Corkery were at work, which was February 5, 2008. Mr. Corkery determined the behavior could not be tolerated and confronted the claimant. When he did so and told the claimant he was being

discharged, the claimant displayed the same behavior, putting his fist and finger close to Mr. Corkery's face.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or

2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra.

While the claimant denied at the hearing that he had his fist near the face of either the team leader or Mr. Corkery, Mr. Corkery's credible first-hand testimony as to the claimant's response to him, coupled with corroborating second-hand statements from the team leader and another witness are sufficient to establish by a preponderance of the evidence that the claimant did in fact have his fist in the face of the team leader in a threatening manner. While the claimant may not have been expecting that he might be called on his day off to fill in for another employee and a certain level of unhappiness of having the employer attempt to call him might be understandable, the physical degree of the claimant's response in becoming threatening toward the team leader shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's February 28, 2008 decision (reference 02) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 5, 2008. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs