

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**TERRY D JEWETT  
2310 E 9<sup>TH</sup> ST  
DES MOINES IA 50316-1720**

**DES MOINES INDEPENDENT COMMUNITY  
SCHOOL DISTRICT  
ATTENTION : BUSINESS/FINANCE  
1802 – 16<sup>TH</sup> ST  
DES MOINES IA 50314-1902**

**Appeal Number: 06A-UI-06670-S2T  
OC: 06/04/06 R: 02  
Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Terry Jewett (claimant) appealed a representative's June 21, 2006 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Des Moines Independent Community School District (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 20, 2006. The claimant participated personally and by Linda Rupe, former co-worker. The employer participated by Cathy McKay, Risk Manager. The employer offered three exhibits, which were marked for identification as Exhibits One, Two and Three. Exhibits One, Two and Three were received into evidence.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on July 23, 2001, as a part-time transportation person. The employer has Work Rules and a Board Policy, but the claimant did not receive a copy. The Work Rules states that "possession of firearms, explosives or weapons or any object used as a weapon on District property or in District vehicles" would result in disciplinary action. The Board Policy states that a weapon is "anything which is designed for use in inflicting injury upon a human being or animal and which is capable of inflicting injury when used in manner for which it was designed".

Before collecting children on her bus on May 10, 2006, the claimant saw a hatchet the size of a hammer at one of the stops. The claimant got out of the bus, retrieved the hatchet and stowed it away from harms way. Her intent was to protect the children and take the hatchet home to cut some woody plants on property. After driving, the claimant is required to return the bus to the employer's property and sign out without dawdling. The claimant parked the bus and carried the hatchet over her shoulder, blade down, into the office to sign out. A couple of people jokingly asked what the claimant planned to do with the hatchet. Joking back, the claimant said she'd chop their foot off. Another employee asked the claimant where she got the hatchet. The claimant explained how she got the hatchet and why she was carrying it.

Later that day, the employer telephoned the claimant and placed her on administrative leave. On May 15, 2006, the employer met with the claimant. The employer said someone heard the claimant say she was going to bury the hatchet in someone's head. The claimant denied making that comment. On May 16, 2006, the employer terminated the claimant for violation of the Work Rules and Board Policy by having a weapon on the employer's property and using threatening language. The claimant had never received a warning during her employment.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons, the administrative law judge concludes she was not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 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). Looking at the Work Rules, it does not appear the hatchet meets the requirement of the policy. It is not a firearm, explosive or a weapon. It is an object. It was not an object that was used as a weapon. The definition of weapons in the Board Policy is slightly different. The employer did not present evidence that a hatchet was designed for inflicting injury upon a human or animal. In order to keep the children safe from harm, the claimant brought the hatchet on to the bus. At that moment she broke the policy. By driving back to the employer's property she broke the policy again. The claimant had no way to avoid breaking the policy without putting the children's safety behind the employer's policy.

The next issue is the words the claimant used. The employer did not provide any first-hand witness to the events. The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The claimant and her witness were in the office on May 10, 2006. They were aware of no intimidation. The comments were made in jest. Perhaps the claimant could have used better judgment in selecting her words. She could have been warned about her selection of words. Instead, the employer terminated an employee who performed her work without incident or warning for almost five years for violating policies she never received. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

#### DECISION:

The representative's June 21, 2006 decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible

bas/kjw