

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARRY B JEUNE
Claimant

APPEAL NO. 13A-UI-07009-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INTERNATIONAL INC
Employer

OC: 05/19/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 4, 2013, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 17, 2013. Claimant participated with his spouse, Reachal Jeune. Employer participated through staffing specialist John Rich.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a machine operator assigned at Williamsburg Manufacturing and was separated from the assignment and employment on April 28, 2013. On April 25 in the parking lot machine operator Michael Neese accused claimant of taking his cigarettes. Claimant started to walk away towards his car and the Neese called claimant “the n word”. Claimant had a small metal rod in his hand, turned around and hit him twice. Both the employer and the assignment have a zero-tolerance policy for fighting. Neese was also discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related misconduct.

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.

Where a claimant participated in a confrontation without attempt to retreat, the Iowa Court of Appeals rejected a self-defense argument stating that to establish such a defense the claimant must show freedom from fault in bringing on the encounter, a necessity to fight back, and an attempt to retreat unless there is no means of escape or that peril would increase by doing so. *Savage v. Emp't Appeal Bd.*, 529 N.W.2d 640 (Iowa Ct. App. 1995).

Employer has an interest and duty in protecting the safety of all of its employees. Claimant's physical aggression was in violation of specific work rules and against commonly known acceptable standards of work behavior. This behavior was contrary to the best interests of employer and the safety of its employees and is disqualifying misconduct even without prior warning. Benefits are denied.

DECISION:

The June 4, 2013 (reference 01) decision is affirmed. The claimant was discharged from employment for reasons related to job misconduct. Benefits are withheld until such time as the claimant works in and has been paid for wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css