

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HASIM STITKOVAC
Claimant

APPEAL NO. 11A-UI-12764-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEE ZEE INC
Employer

OC: 09/04/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 26, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on November 14, 2011. Claimant participated through interpreter Janja Pavetic-Dickey. Employer participated through human resources director Kelly Gallagher and human resources assistant Sarah Tew.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a packaging assembler and was separated from employment on September 6, 2011. His last day of work was August 26, 2011 when supervisor Lee Dennis and building manager Steve Hendricks reported to Gallagher that coworker Sanel Mehisa and other unnamed coworkers reported that Mehisa was in the restroom and claimant kept backing into him. He threw a paper towel at Mehisa, pushed him, and called him obscene names in Bosnian. Mehisa swore at him from the line and threw wadded up toilet paper at claimant and was suspended for a day because it was his first incident. He had been warned about similar issues on February 23, 2011 when claimant yelled at Samir, waved his hands in the air, and threatened to throw him in the air. The line leader told him to stop and claimant “attacked” Samir and was “aggressive” according to coworker Anissa. In July 2011 there was a confrontation between claimant and another coworker and the employer referred the claimant to the employee assistance program (EAP). The employer told him he must attend anger management counseling. He did not complete the counseling but the employer was not aware he had not done so until the final incident in August 2011.

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. EAB*, 529 N.W.2d 640 (Iowa App. 1995).

In spite of the employer's lack of first-hand testimony or sworn witness statements, the claimant's flat denials and very loud interruptions in the hearing lends credence to the employer's testimony about multiple coworkers' complaints over six months about the claimant's conduct towards them. Employer has an interest and duty in protecting the safety of all of its employees. Claimant's verbal abuse, threats, and physical aggression was in violation of specific work rules, prior warnings, 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 September 26, 2011 (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/pjs