

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JOSHUA G COLTHURST**  
Claimant

**ARCHER-DANIELS-MIDLAND CO**  
Employer

**APPEAL NO. 18A-UI-07622-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/24/18  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated July 13, 2018, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 3, 2018. Claimant participated personally. Employer participated by Leanne Wagner.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 24, 2018. Employer discharged claimant on June 27, 2018 because claimant was involved in two arguments with a co-worker on June 24, 2018, wherein claimant made threats and acted aggressively in contravention to employer's policy against workplace violence.

On June 24, 2018, claimant was preparing to start his shift. He spotted a co-worker sitting in the seat where claimant was to take over. Claimant told a co-worker, over whom he held no supervisory position, to get up as claimant was taking over the position and the seat. The co-worker essentially told claimant that he was not the co-worker's boss. From there, claimant and the co-worker got into a heated, face-to-face argument. There were threats made of each party beating up the other, but no pushes or punches occurred. Claimant, as he was walking out the door to remove himself from the situation, pushed the co-worker's lunch pail off of the table where it was sitting.

A few minutes later in another room where claimant was working, the co-worker entered the room to clock out from his shift. Words were again exchanged and claimant stated that the co-worker was lucky claimant didn't have a pipe wrench because if he did he'd use it on the co-worker. Claimant said if he used it he'd hurt or kill the co-worker and end up in prison and away from his kids. When claimant left this room, he shoved a wheeled chair in the vicinity of the co-worker.

Claimant had previously received warnings and coaching regarding inappropriate dealings with his co-workers and supervisors. He'd refused work and had verbal outbursts and was told this type of activity would not be allowed.

At the time of hire and yearly thereafter, claimant received violence in the workplace and code of conduct trainings. Said trainings indicated that workers were not to threaten others or treat others in a disrespectful manner.

## **REASONING AND CONCLUSIONS OF LAW:**

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).

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. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, Id. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, Id. In this matter, claimant, who gave the only direct testimony received by the administrative law judge, gave unspecific testimony regarding the interactions between the parties. The administrative law judge interpreted this to be because the claimant was attempting to avoid specific occurrences that were not to claimant's benefit.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning violence in the workplace and employer's code of conduct. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant knew that he was supposed to act respectfully towards his co-workers, yet often didn't act in such a manner. On June 24, 2018, claimant was aggressive and demanding to a co-worker, disrespected the co-worker's lunch box, and wished he could hurt or kill the co-worker. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated July 13, 2018, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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