

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

STEVE R GUNDMUNSON
Claimant

TYSON PET PRODUCTS INC
Employer

APPEAL 15R-UI-02722-LT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/23/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 11, 2014 (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on April 6, 2015. Claimant participated. Employer participated through human resource manager Brooke Salger and maintenance manager Jeff Bales.

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 maintenance generalist and was separated from employment on November 21, 2014 when he was discharged. His last day of work was November 16, 2014. On that date he called Bales, who was on vacation, spoke with him directly once. Bales told him he was on vacation and to stop calling him as they would discuss his concerns when he returned from vacation. Claimant kept calling, leaving rambling cell phone messages for Bales 17 times between 4:00 p.m. on November 16 through 8:00 a.m. on November 17. Bales could tell he had been drinking because he was slurring his speech and was not making much sense. Not all messages were related to work and were considered threatening and harassing as he said he had worked for the President, knows people in high places, knows chemical and biological warfare through military instruction manuals, and if they wanted to go to war with him he does not lose. He acknowledged in a meeting on November 19 that he had worked long hours, was tired and sore, took three shots, got “drunk and stupid,” made 15 calls, and that his son tried to stop him from calling. He did not mention problems with his phone. He had been warned in writing and suspended on October 15, 2014, about texting maintenance supervisor Josh Tiedemann with similar statements.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to 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.

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).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer has presented substantial and credible evidence that claimant made threats towards a supervisor after having been warned. The employer has a duty to protect the safety of its employees. Claimant's threat of harm was contrary to the best interests of the employer and the safety of his supervisor. The threats are misconduct even without prior warning. Benefits are denied.

DECISION:

The December 11, 2014 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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