

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COREY J KOCH
Claimant

APPEAL NO: 10A-UI-03310-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE AMERICAN BOTTLING COMPANY
Employer

OC: 01/31/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Corey J. Koch (claimant) appealed a representative's February 24, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from The American Bottling Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 14, 2010. The claimant participated in the hearing. Lee Bartine appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 19, 2007. He worked full time as a bulk delivery driver in the employer's Clear Lake, Iowa distribution center. His last day of work was February 4, 2010. The employer discharged him on that date. The stated reason for the discharge was insubordination and making threatening gestures.

On January 29 the claimant got back from his route at approximately 3:00 p.m. His work end time was typically between 3:00 p.m. and 5:00 p.m. Upon his return, Mr. Bartine, the branch manager, told the claimant he needed to speak to him on a job performance issue. The claimant refused and began to leave, going into a lobby area. Mr. Bartine followed him and repeated that the claimant needed to stay and discuss the job performance issue. The claimant again refused, and was waving or swinging his arms as if gesturing Mr. Bartine to get away from him. Mr. Bartine was not close enough to be within arms-reach, but felt somewhat threatened by the claimant's gesturing. The claimant then told Mr. Bartine to go back to his office and sit on his a - - and play on the computer, and left the building. As he left the building, Mr. Bartine told him that he was being suspended for three days. When the claimant returned on February 4, he was discharged.

REASONING AND CONCLUSIONS OF LAW:

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. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such 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. 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 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 of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

While the claimant's gesturing might not be sufficient to clearly establish a threatening intent, the claimant's insubordination by refusing multiple instructions from his supervisor to stay and discuss the job performance issue and the claimant's statement to his supervisor telling him to go to his office to sit on his a - - and play on his computer shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's February 24, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 4, 2010. This disqualification continues until

the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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