

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRISTIAN L RHODES
Claimant

CEI EQUIPMENT COMPANY INC
Employer

APPEAL NO. 14A-UI-09052-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/22/13
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 August 28, 2014, reference 03, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 18, 2014. Claimant participated personally. Employer participated by Kim Hurlbert and Daniel McDowell. Employer's Exhibits 1,3,5,6,7 were admitted into evidence.

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 August 6, 2014. Employer discharged claimant on August 6, 2014 because of claimant's alleged threats of violence to a coworker, dishonesty, and outburst upon being suspended.

On August 6, 2014 claimant called a coworker over to his station. He showed the coworker writings on a piece of paper. The writings showed the words, "KILL" with a small "e" at the end, two "chris" and a "Queen" and what appeared to be a "acid". (See Employer's Exhibit 3). The coworker was uncomfortable with this and went immediately to a supervisor. Supervisor then went to a manager, and the manager had claimant's waste basket confiscated. Manager then pieced back together the piece of paper.

Employer brought claimant into the office, and claimant denied ever writing anything. Claimant then stated if something was written, it was a forgery. Employer stated that this was a very serious incident, and that they needed time to further investigate the incident, so they sent home claimant for the day. Claimant then got very upset and burst out in expletives making foul comments to his coworkers as he left the building. These outbursts led employer to make the decision at that time that further investigation was not necessary as claimant acted highly inappropriately in response to his suspension.

REASONING AND CONCLUSIONS OF LAW:

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).

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 insubordination and proper treatment of coworkers. Claimant was not warned concerning this policy, but had received a company handbook outlining the policies.

The last incident, which brought about the discharge, constitutes misconduct because claimant's response to what may well have been a misunderstanding was out of line. The administrative law judge believes that the writings on the paper, in and of themselves were certainly not sufficient to constitute misconduct on the part of the claimant. There was no showing that claimant had intended anything more than showing his interesting doodles and ability to write with both hands. The other party to whom employer thought the threat was intended was not present, and had no quarrel with claimant. But, when claimant responded as

he did to employer's reasonable desire to look further into the situation, claimant committed misconduct. Employer could not have an employee who had shown that manner of disrespect continue on the job. 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 August 28, 2014, reference 03, 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.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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