

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN C KENT**  
Claimant

**APPEAL NO. 09A-UI-09517-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CLEMONS INC**  
Employer

**OC: 05/31/09**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Steven Kent, filed an appeal from a decision dated June 25, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 20, 2009. The claimant participated on his own behalf. The employer, Clemons, Inc., participated by Body Shop Manager Craig Drury, Controller Lisa Cooper, and Technicians Brad Konicek, and Steve Grabenbauer. Exhibit One was admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Steven Kent was employed by Clemons, Inc., from June 7, 2004 until May 29, 2009 as a full-time technician. At the beginning of his employment the claimant's work quality was more than satisfactory but in the last 18 months the quality began to decline. Many of the cars he worked on came back for "re-do's" for painting and other workmanship problems. This negatively impacted the employer's reputation with customers and with the insurance companies which referred work to Clemons. As a result Mr. Kent received written warnings regarding poor attendance and poor work quality. His evaluation on February 6, 2009, lowered his rating from "outstanding" to "average."

On May 26, 2009, the claimant was told the paint work he did on a vehicle was unacceptable because the new paint did not match the old paint. Mr. Kent was very unhappy and expressed his displeasure before returning to sand the car. Body Shop Manager Craig Drury told the claimant not to sand off the paint until an outside vendor could arrive to use a special machine to match the paint. At that point Mr. Kent threw the sander on the ground and angrily approached Mr. Drury threatening to "dot [his] eye." The supervisor retreated to his office to let the claimant calm down.

While in his office Mr. Drury reviewed Mr. Kent's personnel file for past disciplinary action. The next day he conferred with Owner Mike Clemons about the overall situation. The owner said it was Mr. Drury's decision and he should do whatever was best for the company. May 28, 2009, the exact number of the claimant's "re-do's" was examined and the exact amount of time and dollar loss determined. In addition, many of the customers were given extra free services, such as oil changes, to appease them after the claimant's poor work quality had created dissatisfaction. This also cost the employer in terms of time and material to do the free services. Mr. Drury decided to discharge the claimant based on these factors and notified him on May 29, 2009, he was fired.

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

Iowa Code section 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.

The claimant was capable of working to the employer's satisfaction as evidenced by his outstanding workmanship in the early days of his employment. The reason for the decline in his quality was unable to be determined. As his work quality declined, so did his attitude. The culminating event was one more incident of poor work quality and the threat of physical violence to the supervisor, which triggered a more detailed review of the claimant's work performance.

Failure to work to the best of one's ability is willful and deliberate misconduct. So is threatening a supervisor. This is a violation of the duties and responsibilities the employer has the right to

expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

**DECISION:**

The representative's decision of June 25, 2009, reference 01, is affirmed. Steven Kent is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/css