

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AKIR A MALOUK**  
Claimant

**APPEAL NO. 14O-UI-06107-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TPI IOWA LLC**  
Employer

**OC: 02/09/14**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Akir Malouk (claimant) appealed a representative's March 5, 2014, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with TPI Iowa (employer). Administrative Law Judge Debra Wise issued a decision on May 1, 2014, affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on June 12, 2014. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 8, 2014. The claimant participated personally through Bassa Kekki, interpreter. The employer participated by Danielle Williams, Human Resources Coordinator. Exhibit D-1 was entered into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 10, 2012, as a full-time production worker. The claimant signed for receipt of the employer's handbook on September 10, 2012, and September 27, 2013. The employer has a no tolerance policy with regard to altercations. The employer issued the claimant a verbal and written warning for attendance. On December 2, 2012, the employer issued the claimant a verbal warning for poor performance. Each time the employer notified the claimant that further infractions could result in termination from employment.

On February 6, 2014, the supervisor told two workers to complete a job within two hours. The co-worker was wasting time and incorrectly doing her job. The claimant told the co-worker to do the job correctly. The co-worker started screaming at the claimant to stop telling her what to do because the claimant was not her supervisor. A verbal altercation started. The two yelled, screamed, and swore. The employer told them to stop and that it could not happen again. The

two started screaming and yelling again. The employer sent them to the office where the supervisor obtained the two workers' statements. The claimant admitted in her statement to the employer that she was screaming at the co-worker. The employer terminated the claimant on February 6, 2014.

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

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions with regard to having an altercation at work. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the employer's testimony to be more credible. The claimant's statement during her fact-finding interview is a prior inconsistent statement that was given closer in time to the events for which she was discharged. That prior inconsistent statement matches the statement the employer gave.

**DECISION:**

The representative's March 5, 2014, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs