

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN L GOODWIN
Claimant

APPEAL NO. 13A-UI-03591-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**INTERSTATE POWER SYSTEMS INC
INTERSTATE DETROIT DIESEL**
Employer

OC: 03/03/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 26, 2013, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 25, 2013. Claimant participated personally with witness Shawn Schlemmer, Snap On Tools Representative and Kenny Foster. Employer participated by Bruce Haggstrom, Vice President Operations; Chris Boysen, Technician; Michael Adams, Branch Manager; and Steve Hartson, First Shift Foreman.

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 March 8, 2013.

Employer discharged claimant on March 8, 2013 because claimant threatened to cut the face of a coworker. Claimant was joking. Claimant made such comments on a regular basis. Employer allowed claimant to work after the threats. The cut the face allegation happened on February 19. A second alleged threat occurred February 26 where claimant told a coworker he would settle this after work. Employer's policy calls for discipline up to discharge for harassment or threats of violence. Employees at the workplace were allowed to joke around with frequent use of decorous language and silly threats.

Employer was aware of the incidents on February 19 and February 26 yet failed to take remedial action until March 8. Claimant was allowed to continue working to date of discharge.

Claimant had no prior warnings on his record.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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 failed to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning harassment. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because employer failed to take prompt remedial action. There is no current act of misconduct for which misconduct can be found. The last incident occurred on February 26 with the discharge on March 8. The delay from notice of the act to date of discharge makes this too stale to constitute a current act of misconduct. Employer did not take the threat seriously. If employer had believed in a serious risk of harm it should have immediately suspended claimant. Furthermore, the lack of a prior warning weighs against a finding of an intentional violation. Employer has acquiesced in this behavior in the past. All leads to the conclusion that there is a lack of evidence to prove an intentional policy violation. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated March 26, 2013, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/tll