

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TOBY W CUMMINGS**  
Claimant

**APPEAL NO. 14A-UI-12747-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ELDER CORPORATION**  
Employer

**OC: 12/01/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated December 5, 2014, reference 01, which denied unemployment insurance benefits finding the claimant was discharged from work for insubordination in connection with his employment. After due notice was provided, a telephone hearing was held on January 7, 2015. Claimant participated. The employer participated by Ms. Nicole Finley, Human Resource Representative, and Mr. Steve Krause, Foreman.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Toby Cummings was employed by Elder Corporation from April 14, 2014 until November 8, 2014 when he was discharged from employment. Mr. Cummings was employed as a full-time laborer for the excavation company working on a pipeline crew. Mr. Cummings was paid by the hour. His immediate supervisor was Steve Krause.

Mr. Cummings was discharged on November 8, 2014 based upon his repetitive unwillingness to accept management decisions that had been made by his immediate supervisor, Mr. Krause, and the claimant's attempt to substitute his judgment for that of his supervisor.

During the course of his employment, Mr. Cummings, on a numerous occasions, disagreed with work site decisions made by his foreman and attempted to substitute his own judgment for that of his work supervisor. Mr. Cummings had been instructed on a number of occasions to follow the directives of his foreman.

A final decision was made to terminate Mr. Cummings when the claimant disputed a work site decision that had been made by Mr. Krause on the morning of November 8, 2014 and referred to Mr. Krause's directions to employees as a "stupid decision."

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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).

In discharge cases the employer has the burden of proof to establish disqualifying conduct on the part of the claimant. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, the evidence in the record establishes that Mr. Cummings had repeatedly engaged in disputing work site decision that had been made by his immediate supervisor and had often attempted to substitute his judgment for that of his foreman who had been assigned those duties by the employer. Based upon his supervisor's responses to Mr. Cummings' attempts to replace the supervisor's management authority with his own, Mr. Cummings knew or should have known that his conduct was unwelcome and could jeopardize his continuing employment with the company.

The final incident that caused the claimant's discharge took place on November 8, 2014 when Mr. Cummings disputed a management decision that had been made by Mr. Krause and referred to his foreman's decision as a "stupid decision." This was not an isolated incident but reflected a continuation of the claimant's disputing the management authority of his immediate supervisor. This conduct constitutes misconduct in connection with the claimant's employment and warrants the disqualification for unemployment insurance benefits because it served to undermine his supervisor's authority. See Deever v. Hawkeye Window Cleaning, Inc., 447 N.W.2d 418 (Iowa Ct. of Appeals 1989).

The claimant was discharged for insubordinate conduct and undermining the management authority of a supervisor. Accordingly, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

**DECISION:**

The representative's decision dated December 5, 2014, reference 01, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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