

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DON E SMITH
Claimant

APPEAL NO. 12A-UI-14578-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC
Employer

OC: 01/01/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated December 7, 2012, reference 02, which denied unemployment insurance benefits finding that the claimant voluntarily quit work on November 14, 2012 by refusing to continue working. After due notice was provided, a telephone hearing was held on January 14, 2013. The claimant participated. Although duly notified, the employer did not participate.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Don Smith was employed by Labor Ready Midwest and was most recently assigned to work at R&R Recycling Company. Mr. Smith was assigned at that work location from April of 2012 until November 14, 2012 when he was discharged from employment. The claimant worked as a general laborer and was paid by the hour. His immediate supervisor was Marty (last name unknown).

Mr. Smith was discharged from his employment after he left work on or about November 13, 2012 before the end of the work shift. Mr. Smith normally worked 5:00 a.m. until noon but left work on November 13, 2012 believing that all work had been completed and believing that he had authorization to leave by his immediate supervisor. The claimant had been told in the past by his supervisor if all other work was done when a coworker would leave for out-of-town pickups, that Mr. Smith was free to leave. The claimant believed that all of his duties were completed on November 13, 2012 and because the other worker had left on the out-of-town run the claimant believed that he was authorized to leave work. The claimant attempted to return to work the following day and was told that he was discharged for his conduct the preceding day.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 employer has the burden of proof in establishing job disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984).

In this matter the claimant participated personally and provided sworn testimony. The claimant left employment on or about November 13, 2012 based upon his perception that he was free to leave because another employee had left for an out-of-town run and the claimant had been specifically informed by the supervisor that he could leave when the other employee left for his out-of-town work providing the claimant's other duties had been completed.

Mr. Smith testified that work was completed for the day. Because the other employee left he felt that he was authorized to leave to go home and did so. Although the claimant attempted to explain the following day he thus was discharged.

While the decision to terminate Mr. Smith may have been a sound decision from a management viewpoint, the evidence in the record does not establish intentional disqualifying misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits.

DECISION:

The representative's decision dated December 7, 2012, reference 02, is reversed. The claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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