

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHAD M BOHR**  
Claimant

**APPEAL NO. 07A-UI-05479-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LARRY'S PLUMBING & HEATING**  
Employer

**OC: 04/29/07 R: 04**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Larry's Plumbing & Heating (employer) appealed a representative's May 22, 2007 decision (reference 01) that concluded Chad Bohr (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 14, 2007. The claimant participated personally. The employer participated by Larry Schultz, President.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on November 28, 2005, as a full-time technician. On or about March 30, 2007, employer heard rumors that the claimant's coworker and brother were going to open a business in direct competition with the employer. The employer confronted the claimant and his brother. The brother said that he would be quitting at some point in the future to open his own business but would not give the employer a date. On April 6, 2007, the employer again asked the brother when he was going to quit to start his business. The brother told the employer he was unsure of the date. The brother discussed his new business with the claimant. The brother told the claimant that he would hire him to work for the new business and the claimant agreed to come to work for him whenever the business opened.

On April 12, 2007, the brother told the employer he was going to take April 13, 2007, to make financial preparations for starting his business. The brother would not give the employer any date certain for his last day. The employer told the claimant and his brother that April 12, 2007, would be their last day working. The employer gave the claimant vacation pay.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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 disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide any evidence of misconduct at the hearing. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

#### **DECISION:**

The representative's May 22, 2007 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/kjw