

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUDY LEEMANS

Claimant

APPEAL NO. 13A-UI-12721-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLIED BLENDING & INGREDIENTS INC

Employer

OC: 10/13/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated November 7, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on December 5, 2013, by telephone conference call. The claimant advised the appeals bureau in writing that he would not be participating in the hearing. The employer participated by Amy Coyle, Human Resources Manager, and Darlene Young, Director of Finance. The record consists of the testimony of Amy Coyle and the testimony of Darlene Young.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a food manufacturing company. The claimant was hired on February 16, 2013, as chief financial officer. He was a full-time employee. His last day of work was October 16, 2013. He was terminated on October 16, 2013.

Two incidents led to the claimant's termination. On August 14, 2013, he sent out an email that the employer considered inappropriate and overly aggressive. The email was directed to certain employees who worked for the vice president of operations and concerned a bill of lading that contained errors. The email was read into the record. The claimant was very critical of the employees involved with this bill of lading and he used a bold font and capitalized a number of words. He referred to the mistakes as "a mess." The claimant did not involve the vice president of operations prior to sending the email. The president of the company directed the claimant to apologize to the recipients of the email. He had been warned two prior times about aggressive comments he had made.

The second incident occurred on October 4, 2013. Darlene Young, Director of Finance, made a complaint on behalf of herself and other employees in the department against the claimant. She said that the claimant would look employees “up and down” to the point that it made those individuals uncomfortable. Ms. Young had been bent over retrieving files from a file cabinet and discovered that the claimant was looking at her rear end. The claimant told another employee that he liked her jeans. She asked whether he like her sweater and beads also and the claimant replied that he was not interested in that part of her body.

Ms. Young made her complaint to Randy Schmalzel, the president of the company. He was not aware that this type of conduct was occurring. An investigation ensued but the claimant was not told about the investigation and he continued to work. The delay between Ms. Young’s complaint and the actual termination was due to an IT investigation into the claimant’s email and internet usage. The claimant was not informed about the investigation because of fear over his potential response.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker’s duty to the employer. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See

871 IAC 24.32(8) See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The evidence showed that the final incident leading to the decision to discharge the claimant occurred on October 4, 2013. The claimant was not discharged until October 16, 2013. The claimant was not informed that there was an investigation ongoing concerning his possible discharge and he was allowed to continue working. The elapse of twelve days between final incident and discharge means that the last incident was not a *current* act of misconduct. All of the information needed to terminate the claimant was readily available to the employer with the exception of information that the employer wanted to gather from its IT department. The administrative law judge understands that there is a certain period of time that the employer will be given to investigate but a period of twelve days in this case was excessive. Since the employer did not discharge the claimant for a current act of misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated November 7, 2013, reference 01, is affirmed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css