

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHAN D MONROE
Claimant

APPEAL NO. 11A-UI-08668-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HALEY EQUIPMENT
Employer

OC: 12/19/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Nathan Monroe filed a timely appeal from a representative's decision dated June 22, 2011, reference 06, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on July 25, 2011. The claimant participated personally. The employer participated by Mr. Tom Haley, company president. Employer's Exhibit 1 was received into evidence.

ISSUE:

At 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: Nathan Monroe was employed by Haley Equipment from December 20, 2010, until May 17, 2011, when he was discharged from employment. Mr. Monroe worked as a full-time parts department employee and was paid by the hour. His immediate supervisor was Larry Rowetter.

Mr. Monroe was discharged after it was brought to the attention by company customers and employees that Mr. Monroe had made negative statements about the company and had publicized them on his Facebook account. The employer noted that not only were the statements regarding the company and its employees derogatory, but some had been made during working hours. On May 6, at 9:13 a.m., Mr. Monroe had posted the following entry: "Well, I know you can't fix stupid, but how the hell do you let your best tech go and keep a shop foreman that can't even wipe his own ass? The place gets stupider every day." On May 12 at 7:55 a.m., the claimant made following entry: "Damnit forgot the 'let's try and keep stupid to a minimum' sign today and look what happens, here it is not even eight and I'm already dealing with stupid... Good thing I'm only working a half day!!"

When questioned about his Facebook entries, the claimant provided no reason for making them but indicated to his employer that he was sorry that he had done so. Because the entries had

been widely publicized and had referred to the company and specific individuals within the company in a derogatory manner, a decision was made to terminate Mr. Monroe from employment. The claimant had not been previously warned or counseled prior to being discharged.

It is the claimant's position that he did not specifically identify who his employer was and that, contrary to the contents of his Facebook entries, the claimant holds his employer in high esteem.

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 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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. 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 App. 1992).

The evidence in the record establishes that Mr. Monroe chose to vent his dissatisfactions with his employer and with specific individuals in the employ of Haley Equipment by publicly making statements on his Facebook account that were derogatory in nature and intended to foster a negative view of company employees and the employer itself. The claimant knew or should have known that making public derogatory statements about his employer and its employees on a social network would tend to publicize the negative statements and foster a perception that the employer and its employees were "stupid" and that the place of employment was not a good place to work for. The administrative law judge finds a sufficient nexus or connection between the claimant's comments on his social network and his employment with Haley Equipment. Numerous recipients of Mr. Monroe's negative Facebook comments about his employer and its employees were aware of the claimant's place of employment and commented to the employer about Mr. Monroe's Facebook statements.

The claimant's conduct showed a disregard for the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. Therefore, unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated June 22, 2011, reference 06, is affirmed. The 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, provided he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw