

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANE M BIXBY
Claimant

APPEAL NO. 11A-UI-10947-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

SELDIN COMPANY
Employer

OC: 07/03/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Shane M. Bixby filed a timely appeal from an unemployment insurance decision dated August 10, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a hearing was held in Cedar Rapids, Iowa, on October 26, 2011, with Mr. Bixby participated. His former employer, Seldin Company, chose not to participate in the hearing. Claimant Exhibit A was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Shane M. Bixby was employed as a maintenance supervisor by Seldin Company from April 18, 2011, until he was discharged July 7, 2011. Mr. Bixby had worked as maintenance supervisor at an apartment complex. He had been working at the complex for over a year when Seldin Company bought the property. Mr. Bixby was given no reason for his discharge. He had always used approved vendors when making purchases. Deb Daugherty had been his supervisor for all but the last eight days of his employment. She was extremely happy with his performance and felt that he exceeded his predecessors in organizational and management skills.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with the employment. 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. See Iowa Code section 96.6-2. As noted above, the employer did not participate in the hearing. The claimant's testimony and documentary evidence contains no hint of misconduct. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated August 10, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw