

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LARRY R PRELL**  
Claimant

**APPEAL NO. 07A-UI-08658-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SIMONSEN INDUSTRIES INC**  
Employer

**OC: 08/12/07 R: 01  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated August 31, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 25, 2007. Mr. Prell participated personally. The employer participated by Greg Ebersole, HR Manager, Mark Simonsen, Rendering Plant Manager, Christopher Driesen and Lyle Krentz. Employer's Exhibits One through Seven and Claimant's Exhibit A were marked and received into evidence.

**ISSUE:**

At issue in this matter is whether the claimant quit for good cause attributable to the employer or whether the claimant was discharged for misconduct in connection with his work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from December 30, 2003 until July 25, 2007. Mr. Prell was employed as a full-time maintenance supervisor and was paid by the hour. His immediate supervisor was Mark Simonsen, Rendering Plant Manager.

Mr. Prell left his employment on July 25, 2007 when he reasonably believed that he had been discharged by his immediate supervisor, Mr. Simonsen. The claimant had been upset because a number of employees who were to assist him in a major maintenance operation that day had not made themselves available. The claimant had observed at least one of the employees playing cards for an extended period of time and had attempted to locate that employee as well as others so that the maintenance project could begin. The claimant went to the facility manager's office in an attempt to gather employees for the necessary maintenance work and at that time the employee who had previously been playing cards indicated that he would be assisting a different worker that day. During the ensuing conversation between Mr. Prell and the facility manager, Mr. Prell continued to insist that he needed more than one worker to assist him in the project that had been scheduled for that day and had required the plant to be shut down for the day. When it did not reasonably appear to Mr. Prell that sufficient workers would

be assigned to him to perform the scheduled duties that day, the claimant indicated that he was "going home for the day" and would be clocking out. Mr. Simonsen, Rendering Plant Manager, delayed the claimant's leaving and continued the heated verbal debate about the number of workers that were to be assigned to assist Mr. Prell. When the matter could not be resolved, Mr. Prell again indicated his desire to clock out and go home for the day. Mr. Simonsen responded, "Get the fuck out." The claimant reasonably interpreted this statement to mean that he was being discharged from employment based upon the angry exchange and Mr. Simonsen's demeanor. When called the following Monday to an exit interview, Mr. Prell immediately informed the company's human resources manager that he had been discharged and had not chosen to leave employment. The claimant was not offered continued employment or reinstatement at that time.

#### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes in this case based upon the evidence in the record that the claimant's separation from employment that occurred on July 25, 2007 took place when the claimant reasonably believed that he was being discharged from employment based upon the statement and demeanor of his immediate supervisor, the facility manager. On that date Mr. Prell had experienced ongoing difficulty in gathering necessary workers to begin a substantial maintenance project that had caused the facility to be shut down for the day. After being unable to gather workers, the claimant followed a reasonable course of action by going to the facility manager's office for assistance. Although the manager knew that the claimant needed assistance in the maintenance project, it appears that workers were allowed to choose other assignments leaving Mr. Prell with only one person to assist him. As the project could not be accomplished without at least four workers, the claimant in desperation indicated his desire to punch out "for the day" as the project could not be completed. Mr. Prell was delayed in his leaving while the manager continued to argue the point with the claimant. When Mr. Prell continued in his position that the project could not be accomplished without at least a minimum number of workers and that he desired to clock out for the day because the project could not be accomplished, the claimant was instructed to "get the fuck out." The administrative law judge finds that the statement in conjunction with the context and the demeanor displayed by the facility manager led Mr. Prell to the reasonable conclusion that he had been discharged from employment. When the claimant reported for an exit interview meeting the following Monday, he attempted to explain his position in the case, however, the employer did not offer reinstatement or indicate in any manner it was not the employer's intention to discharge Mr. Prell.

Having determined that the claimant's separation took place due to a discharge the question becomes whether the discharge was disqualifying under the provisions of the Iowa Employment Security Law. The evidence establishes that in normal circumstances employees are required to request time off in advance and to receive approval before leaving. The evidence establishes that Mr. Prell specifically indicated his desire to check out "for the day" and had made that statement to his immediate supervisor before attempting to clock out. The evidence does not establish that the claimant was told that he could not clock out but instead that the employer made a statement leading the claimant to the reasonable conclusion that he had been discharged. The administrative law judge finds that requesting a day off work due to desperation in an employment setting is not in and of itself disqualifying misconduct in connection with the work.

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 question in this case is not whether the employer has the right to discharge an employee for these reasons but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Act. While the decision to separate Mr. Prell from his employment may have been a sound decision from a management viewpoint, for the above stated reasons, intentional disqualifying misconduct in connection with the work has not been shown. Benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated August 31, 2007, reference 01, is hereby affirmed. The claimant was discharged under non disqualifying conditions. Benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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