

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUSSELL W BATES
Claimant

APPEAL NO. 09A-UI-11661-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HENDERSON INVESTMENTS INC
RED WING SHOE STORE**
Employer

**OC: 07/05/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Russell Bates (claimant) appealed a representative's August 3, 2009 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Red Wing Shoe Store (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 28, 2009. The claimant participated personally. The employer participated by John Henderson, President.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 17, 2008, as a full-time salesman. The employer did not have a handbook.

In April 2009, the claimant wore a Red Wing t-shirt to work. The supervisor told the claimant that he was to go home and change because he was only allowed to wear the t-shirt for sale days and weekends. The claimant said he did not know the rule and apologized. He worked late the night before. The supervisor told him that he did not "give a fuck about the job". The claimant said he did and that he would not put in 60 hours per week if he did not care about his job. The supervisor terminated the claimant. The employer hired the claimant back. The employer told the claimant that he needed to keep his temper under control. The employer did not reprimand the supervisor.

On May 16, 2009, the supervisor accused the claimant of changing the schedule. She wanted the claimant to sign a paper saying he changed the schedule. The claimant refused and the supervisor walked out of the store. The claimant thought a co-worker changed the schedule and let the claimant get in trouble. The claimant confronted the co-worker. The claimant later apologized to the co-worker. The co-worker understood that the claimant was under a lot of

stress from working 60 hours per week. On May 18, 2009, the employer terminated the claimant for confronting the store manager and threatening an employee.

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). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony from someone who witnessed the events but did not. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 3, 2009 decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs