

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHASE D ECKLEY
Claimant

APPEAL NO. 11A-UI-01547-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROSSROADS ENTERPRISES INC
CRYSTAL CLEAN
Employer

OC: 01/02/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Crystal Clean (employer) appealed a representative's February 1, 2011 decision (reference 01) that concluded Chase Eckley (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for March 10, 2011, in Des Moines, Iowa. The claimant was represented by Jay Kamath, Attorney at Law, and participated personally. The employer was represented by Andrew Boettger, Attorney at Law, and participated by Travis Berger, Owner; Ryan Woods, Crew Point; Jacob Sheedlo, Crew Lead; and Michael Heintz; Customer. The employer offered and Exhibits One, Two, and Three were received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 in May 2007, as a full-time crew lead. The claimant signed that he understood the employer's handbook on May 29, 2007. The person who trained the claimant rounded his hours up at the end of his shift. The employer issued the claimant reminders for proper performance regarding cellular telephone usage, performing personal errands on work time, and cleaning homes. On November 9, 2008, the employer issued the claimant a verbal warning regarding a drug arrest.

The workers generally worked in teams of two or more. The crew points were subordinate to the crew lead. It was not uncommon for employees to run personal errands while on the clock. From time to time workers would take a longer break but record a shorter break on the time card. The crew talked amongst themselves when returning to the shop at the end of the shift regarding the end time they would record on their time sheets. No clock was visible from the time sheet area. At least two employees smoked marijuana in the company vehicle.

On January 5, 2011, employees came forward and admitted to falsifying time sheets. The employees indicated that the claimant had influenced them to falsify. On January 6, 2011, the employer terminated the claimant. The employer thought the claimant had falsified his time sheet, influencing others to falsify time sheets, used illegal drugs at work, and running unauthorized errands on company time. The employer did not have specific dates of events. Other workers who falsified time sheets, ran personal errands on company time and used illegal drugs at work were not terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code § 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). As persuasive authority, the falsification of an activity log book constitutes job misconduct. Smith v. Sorensen, 222 Nebraska 599, 386 N.W.2d 5 (1986). It appears that all employees may have falsified their time records while working for the employer. In this case, the employer treated employees disparately. The employer decided to terminate the claimant for the same behavior that other employees exhibited and were not terminated.

The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to provide any evidence of a final incident of misconduct. The administrative law judge understands that the employees' behavior was unacceptable but the employer allowed this unacceptable behavior from employees for more than three years. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's February 1, 2011 decision (reference 01) is affirmed. 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