

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRIS M BLACKSMITH
Claimant

APPEAL NO. 07A-UI-11011-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR SERVICE COMPANY
Employer

**OC: 01/14/07 R: 03
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 November 26, 2007, reference 04, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 12, 2007. Mr. Blacksmith participated personally. The employer participated by Ms. Jackie Allsup, Office Manager.

ISSUE:

The issue in this matter is 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 July 31, 2006 until November 2, 2007 when he was discharged from employment. Mr. Blacksmith worked as a full-time apprentice roofer and was paid by the hour. His immediate supervisor was Jerry Meyers.

On Friday, November 2, 2007, the claimant and another company employee, Noel Hansen, became involved in a short verbal exchange while working with the crew on a roof project. Believing that the exchange had ended, Mr. Blacksmith began to walk away whereupon the claimant was grabbed by the other employee and challenged to a physical altercation. Mr. Blacksmith felt the other employee's actions were uncalled for and dangerous as the parties were working on a roof at the time. Later that day Mr. Blacksmith reported to the company offices to report the incident to the company owner. When the owner was not available, he spoke to Ms. Allsup, Office Manager. At that time the claimant stated his concerns about safety and indicated that he planned on looking for other employment but would provide two weeks' notice to the employer when and if he found new employment. Later that evening the claimant was called at home by his supervisor, Jerry Meyers, and was informed that he was being discharged from employment because he was "quitting his job." Although Mr. Blacksmith

specifically indicated that he had not stated that he was quitting, he nonetheless was discharged.

It is the employer's position that following the incident on the roof, Mr. Hansen later reported to the company that the claimant had telephoned Mr. Hansen and had stated a threat. It is the employer's position that because of the nature of the work the employer believed that allowing the claimant to continue working would pose a safety risk and, therefore, discharged the claimant prior to the effective two-week notice of leaving that the employer asserts the claimant had given.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge in this case is whether the evidence in this case supports a finding of intentional disqualifying misconduct on the part of Mr. Blacksmith. It does not. Mr. Blacksmith participated personally in the hearing and provided sworn firsthand testimony. The claimant testified that he did not state that he was quitting his job nor provide a two-week notice of leaving but instead stated to the office manager that because of safety concerns he was planning on looking for new work and that "if" he found new work he then would provide a two-week notice before leaving employment with the company. The claimant further testified that his supervisor, Jerry Meyers, called the claimant later that evening and discharged the claimant stating that the claimant was being discharged because he had "quit his job." Mr. Blacksmith testified under oath that he specifically stated to Mr. Meyers during the conversation that he had stated that he was not quitting his job but was nevertheless terminated from employment at that time.

Although the administrative law judge is aware that it is the employer's position that the claimant was discharged because he had telephoned a threat to the other worker, this evidence is hearsay in nature and cannot be accorded the same weight as the claimant's sworn direct testimony. In this case the employer chose to rely upon hearsay statements and of providing the firsthand witnesses with direct knowledge of what had occurred in this matter. The administrative law judge finds Mr. Blacksmith to be a credible witness and finds that his testimony is not inherently improbable. Therefore, the administrative law judge must conclude that the evidence does not support a finding of intentional disqualifying misconduct on the part of Mr. Blacksmith. The claimant testified that he did not engage in the physical altercation with the other worker on the roof that day and that he did not provide notice of intention to quit his employment. The claimant further testified under oath that he did not telephone the other worker nor make any threats. Stating to one's employer that a worker may consider looking for other employment in the future is not in and of itself disqualifying misconduct within the meaning of the Iowa Employment Security Act.

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.

For the reasons stated herein, the administrative law judge concludes the claimant was discharged by the employer for reasons that were not disqualifying. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of the law.

DECISION:

The representative's decision dated November 26, 2007, reference 04, is hereby affirmed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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