

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRAD L RICHARDS
Claimant

APPEAL NO. 08A-UI-04481-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY SERVICES
Employer

**OC: 04/06/08 R: 04
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Brad Richards filed an appeal from a representative's decision dated April 30, 2008, reference 01, which denied benefits based on his separation from Per Mar Security Services (Per Mar). After due notice was issued, a hearing was held by telephone on May 22, 2008. Mr. Richards participated personally and was represented by Michael McCarthy, Attorney at Law. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Richards was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Richards was employed by Per Mar from August 5 until December 5, 2007, as a full-time security officer. He was discharged based on an allegation that he threatened a supervisor, an allegation denied by Mr. Richards.

Mr. Richards had received a warning on December 3 alleging that he was wearing the incorrect color of shoes and that he appeared at work unshaven. He was wearing the same shoes he normally wore, which were the required color. He had, in fact, shaved before appearing for work. He had also received a warning after an inappropriate text message was received on a telephone at work. Mr. Richards was off duty and was intending to send a text message to a coworker who was also off duty. He inadvertently sent the message to the incorrect telephone.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was predicated on a current act that constituted misconduct within the meaning of the law. See 871

IAC 24.32(8). It was incumbent upon the employer to provide specific details concerning the reason for discharge, as mere allegations of misconduct are not sufficient to result in disqualification. See 871 IAC 24.32(4).

The employer did not participate in the hearing to provide details as to the reason for Mr. Richards' discharge. The employer did not provide evidence that he did, in fact, threaten someone at work. Even if Mr. Richards had committed prior infractions, the employer had determined that the appropriate discipline for those infractions was a written warning. On the whole, the employer has failed to establish that he was discharged for substantial misconduct as required for a disqualification. See Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated April 30, 2008, reference 01, is hereby reversed. Mr. Richards was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw