

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTONIO L ALEXANDER
Claimant

APPEAL NO. 17A-UI-02704-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASTERBRAND CABINETS INC
Employer

OC: 01/29/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Masterbrand Cabinets (employer) appealed a representative's February 27, 2017, decision (reference 01) that concluded Antonio Alexander (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 31, 2017. The claimant participated personally. The employer participated by Amy Mosley, Human Resources Representative, and Dan Corrigan, Production Supervisor.

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 on July 26, 2015, as a full-time machine operator. He worked from 6:00 a.m. to 2:30 p.m., when his work was complete. The employer did not give the claimant any warnings relating to his termination. Shortly before his separation from employment, the employer issued the claimant an excellent evaluation.

On January 24, 2017, near the beginning of his shift, the production supervisor called the claimant into his office and talked to him about a conversation the claimant allegedly had with a new co-worker. The claimant did not remember the conversation or know exactly who the new co-worker was. The production supervisor threatened the claimant with federal charges. The claimant thought the conversation was over and started to leave the office. The production supervisor told the claimant to "get his ass back into the office". The claimant said he was "a grown ass man" and did not want to be talked to in that manner. The production supervisor told the claimant he had to stay at work until all the other employees left for the day, about 3:30 p.m. The claimant asked what work he should be doing during that time. The production supervisor was unable to tell the claimant an answer. The claimant could not go to the human resources office about the conversation because it did not open until 7:00 a.m.

The production supervisor told the lead person to let him know if there were any problems. The claimant returned to work. The claimant asked the lead person if he knew anything about the circumstances with the new co-worker. When the lead person did not respond, the claimant went back to work. The new co-worker approached the claimant and apologized about the situation. A few minutes later the production supervisor returned to the claimant's work area. The claimant was taking material off a cart and putting it on a pallet, as his job required. The employer told the claimant to go home. The claimant asked the production supervisor why he was being sent home. The production supervisor told the claimant he was bothering people. Then, the production supervisor said he was going to call the police. The claimant left. On January 25, 2017, the employer terminated the claimant for creating an offensive threatening environment, by throwing material on the floor, yelling, using profanity, and talking to co-workers.

The claimant filed for unemployment insurance benefits with an effective date of January 29, 2017. The employer provided the name of a representative to participate at the fact-finding interview on February 23, 2017, but that person was not available at the number provided. The fact-finder left a voice message with the fact-finder's name, number, and the employer's appeal rights. The employer did not respond to the message.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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). The claimant's and the employer's testimony is inconsistent. 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 and/or statements from other workers regarding the claimant's behavior during the time the production supervisor was absent, but the employer chose not to do so. The employer did not offer first-hand testimony for those incidents and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct.

There are incidents the claimant and the production supervisor testified about where both were present. It appears both parties used some inappropriate language and may have raised their voices, but only one person was terminated. On January 24, 2017, the claimant was threatened with prosecution for something he did not understand, was treated unprofessionally by his supervisor, and was threatened with removal by law enforcement for asking questions. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's February 27, 2017, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs