

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD E ENGELBART
Claimant

APPEAL NO. 09A-UI-07396-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

K L INC
SERVICEMASTER JANITORIAL SERVICES
Employer

OC: 04/12/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 6, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 8, 2009. Claimant participated personally. Employer participated by Kathy Larson, Owner, Cameron Weber, Wes Grit and Brittany Brecht. Exhibit One was admitted into evidence.

ISSUE:

The issue in this matter is whether 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: Claimant last worked for employer on April 14 2009. He was “part time” although worked 40 hours per week. He was a supervisor of a cleaning crew that was assigned to a plant. The claimant received a written warning in February 2009 for using profanity and not following directions of the owner. On April 15, 2009 the claimant was told he was losing his position as supervisor and would be put on the crew. The claimant called Ms. Larson and argued about his demotion. The employer had offered his job to another employee and decided to terminate the claimant on April 16, 2009. The employer discharged the claimant for insubordination on April 15 and for the claimant missing work on April 15 and 16. The insubordination on April 15th consisted of the claimant being upset at his demotion and arguing with his employer.

REASONING AND CONCLUSIONS OF LAW:

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.

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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment

of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer's assertion she terminated the claimant for attendance issues on April 15 and 16 is not credible. The employer had offered the claimant's job to another person and had a letter prepared terminating the claimant well before the claimant's shift began on April 16. The insubordination issue is a closer question. The claimant received a warning in February about profanity and following instructions. On April 15 the claimant was upset that he had been demoted. He argued over the phone with his employer about his demotion. The fact he was upset and did not want to come in on that day so he could consider his options and cool off is not totally unexpected. The employer would like the claimant to act cool and calm when told of a demotion; ideally that should be the reaction of an employee, however it is not how all employees react to a demotion. The key issue is whether his conduct constituted misconduct as defined in the above rule. The employer did not use profanity. He was upset. The conduct does not appear to be an intentional or willful disregard of the employer's interests. The claimant did express his displeasure and disagreement with the employer.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct.

DECISION:

The decision of the representative dated May 6, 2009, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/pjs