

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CALEB A NOLAN
Claimant

APPEAL NO. 09A-UI-04801-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DANNY HARTMAN JR
JR'S HOME REPAIR
Employer

OC: 02/08/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated March 17, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for an held on April 22, 2009. The claimant participated personally. The employer participated by Danny Hartman, Company Owner.

ISSUE:

At issue is whether the claimant was discharged for misconduct connected to his work sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses and having considered all of the evidence in the record, finds: The claimant was employed as a full-time carpenter for JR's Home Repairs from October 25, 2004 until November 5, 2008 when he was discharged from employment.

The claimant was discharged on November 5, 2008 for having an outside personal relationship with the company owner's wife. After discharging Mr. Nolan, the employer reconsidered an offered to re-employ the claimant effective the following Monday, November 10, 2008.

Although the claimant initially accepted the offer of re-employment effective November 10, 2008, he did not accept the offer as Mr. Hartman confronted the claimant with Mr. Hartman's wife once again over the weekend and the claimant believed that the offer had been rescinded.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant's separation from employment occurred on November 5, 2008 under nondisqualifying conditions.

In this unusual case the claimant was not discharged for work-related conduct but for questionable moral conduct that occurred during non-working hours when the claimant had a personal relationship with the company owner's wife. The evidence is undisputed that the claimant was discharged on November 5, 2008 and it is undisputed that the employer subsequently reconsidered the matter and decided that the decision to terminate Mr. Nolan was unjustified. The employer spoke with Mr. Nolan and the parties agreed that effective Monday, November 10, 2008, the claimant would be rehired in his original position with the company. Prior to the rehiring or reinstatement of the claimant to be effective November 10, 2008, a confrontation between Mr. Nolan and Mr. Hartman again occurred and the claimant reasonably believed that the offer of reinstatement or rehire had been withdrawn.

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 above-stated reason the administrative law judge concludes that the claimant was discharged on November 5, 2008 for no disqualifying reason directly connected with his employment. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 17, 2009, reference 01, is affirmed. The claimant was dismissed under nondisqualifying conditions. Benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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