

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN F SPOMER
Claimant

APPEAL NO. 11A-UI-05697-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMEGA GARAGE DOOR & OPENER INC
Employer

**OC: 03/20/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Ryan F. Spomer filed a timely appeal from an unemployment insurance decision dated April 21, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, on May 26, 2011, with Mr. Spomer participating. Mike Cole accompanied Mr. Spomer but did not participate in the hearing. Exhibits A and B were admitted into evidence. Dwayne Carter, Walt Chapman, Bryan Springer, Ryan Simpson, and Pam Carter participated for the employer, Amega Garage Door & Opener, Inc. Exhibits One through Three were admitted into evidence on behalf of the employer.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Ryan F. Spomer was employed as a door technician by Amega Garage Door & Opener, Inc. from August 30, 2009, until he was discharged April 1, 2011. On March 29, 2011, Mr. Spomer and Lead Worker Danny Russell worked at two job sites, construction projects by Hubbell Homes Company, a new and important customer for Amega Garage Door & Opener, Inc. Mr. Russell and Mr. Spomer did not clean up the excess packaging and other residue left over from their work. On the following morning, Greg Moeller of Hubbell Homes called Sales Manager and Scheduler Walt Chapman of Amega to complain about the mess. Mr. Chapman called Mr. Russell and specifically told him that he and Mr. Spomer were to return to those sites to finish clean up. Mr. Russell did not pass the information on to Mr. Spomer, and neither of them returned to the job sites. On March 31, 2011, Mr. Chapman inspected the job sites personally. He told President Dwayne Carter of his observations and cleaned up the job sites himself. Mr. Carter discharged both Mr. Russell and Mr. Spomer on April 1, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question is not whether Mr. Spomer's actions warranted discharged. The issue before the administrative law judge is whether his actions warrant disqualification for unemployment insurance benefits.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the discharge constituted a current act of misconduct. See 871 IAC 24.32(8).

The evidence does not establish that Mr. Spomer was told to return to the Hubbell Homes job sites. Had he willfully failed to return to those job sites after receiving a specific directive to do so, the outcome of this case would have been different. As it stands, the evidence does not establish a final, current act of misconduct. Therefore, no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated April 21, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw