

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFERY A SKERIPSKI
Claimant

APPEAL NO. 13A-UI-13136-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 06/30/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated November 25, 2013, reference 03, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on December 17, 2013. The claimant participated personally. The employer participated by Michael Payne, Risk Management. The record consists of the testimony of Michael Payne; the testimony of Jeffery Skeripski; and Employer's Exhibits 1-4.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a staffing agency. The claimant filled out an employment application, which asked whether he had ever been convicted of a violation of the law. The claimant answered no. (Exhibit 2) The claimant had been arrested for theft in the second degree and was given a deferred judgment and probation for three years. He did violate his probation and was cited for contempt of court. The claimant did not think he had to disclose that charge since he was given a deferred judgment. The clerk of court of Pottawattamie County told the claimant this this did not appear on Iowa Courts on Line.

The claimant was given an assignment at Pella Corp. The assignment started on July 8, 2013. He was a full-time assembler. His last day of work was November 1, 2013. Pella wanted to hire the claimant but a background check revealed the charge that led to the deferred judgment. Pella refused to hire the claimant and the employer ended the assignment and terminated the claimant.

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(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The claimant thought he was truthfully answering the question concerning his prior criminal record since he had been led to

believe that his judgment was no longer on the record since it was a deferred judgment. The administrative law judge does not believe that the claimant willfully and deliberately falsified his employment application. In addition, the claimant was not discharged for a current act of misconduct. The employer allowed the claimant to work the assignment at Pella for more than three months and only terminated the claimant after Pella did a deeper background check on the claimant. Even if there was a falsification of the application, the falsification is too stale to constitute a current act of misconduct. Employer simply waited too long to bring this up as an issue. Misconduct must be based on a current act. The falsification that is three months old is not a current act. Since the claimant was not discharged for a current act of misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated November 25, 2013, reference 03, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css