

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PETER N NELSON**  
Claimant

**APPEAL NO: 11A-UI-16184-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KEYON COMMUNICATIONS INC**  
Employer

**OC: 08/21/11  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Peter N. Nelson (employer) appealed a representative's December 15, 2011 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Keyon Communications, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on January 19, 2012. The claimant participated in the hearing and presented testimony from one other witness, Vonella Hacker. Dannie Jo Handel, in-house attorney, appeared on the employer's behalf and presented testimony from two witnesses, Rhett Holechek and Jeff Huitema. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits denied.

**FINDINGS OF FACT:**

After a prior period of employment with the employer's predecessor, the claimant started working for the employer on July 1, 2010. He worked full-time as field technician covering northwestern Iowa and southwestern Minnesota, working out of his home office, and supported out of the employer's Omaha, Nebraska office. His last day of work was August 24, 2011. The employer discharged him on about August 25, 2011. The stated reason for the discharge was having a confrontation with other employees at the Omaha office after he had been instructed not to go to the Omaha office without specific permission.

The claimant had been instructed generally by an email on April 7, 2011 and specifically verbally by his supervisor, Huitema, in June that he was not to go into the Omaha office unless he obtained specific authorization from Huitema to do so. On August 24 the claimant wanted to get some needed parts to address some problems in Jackson, Minnesota; someone in the engineering department told him that he could pick up the parts because it would take too long to ship. The claimant did not check for permission with Huitema; while Huitema was on vacation that day, he was available by phone. When the claimant arrived at the Omaha office, he spent time visiting with one of the engineers, which the director of the engineering department, Holecheck, felt was excessive and was taking up his staff person's time. A confrontation ensued between the claimant and Holecheck, requiring the intervention of a higher manager who had to ask the claimant to calm down and leave. As a result of the confrontation occurring at the Omaha office after the claimant had been instructed not to go to the Omaha office without Huitema's specific authorization, the employer discharged the claimant.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's going to the Omaha office without his supervisor's specific permission after having been so instructed and then proceeding to engage in a confrontation at the office shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's December 15, 2011 decision (reference 02) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 21, 2011. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/kjw