

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD D DHABOLT
Claimant

APPEAL NO. 09A-UI-10600-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACH FOOD COMPANY INC
Employer

**Original Claim: 06/21/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

ACH Food Company (employer) appealed a representative's July 21, 2009 decision (reference 01) that concluded Donald Dhabolt (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 11, 2009. The claimant participated personally. The employer participated by William Nelson, Human Resource and Security Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on September 22, 2008, as a full-time warehouse person. The claimant signed for receipt of the employer's handbook on or about September 22, 2008. The employer issued the claimant warnings on March 3, 6, and 12, 2009, for absenteeism. The claimant properly reported that his infant daughter was hospitalized.

The claimant thought he could take five days bereavement leave when his brother was killed. He took four days. Afterwards, the employer told the claimant that the policy indicated he could only take three days for bereavement. The employer said it would look at the situation and get back to the claimant. The employer did not get back to the claimant and paid the claimant for four days of bereavement leave.

The claimant assumed he had one day he could take off because the employer granted him four days of bereavement leave. On June 22, 2009, the claimant took the day off to attend the trial of the person responsible for his brother's death. He properly reported his absence. The employer terminated the claimant on June 23, 2009, for taking an extra day. The claimant argued that he had been paid four days of bereavement leave. After the termination, the employer changed the records and withheld money from the claimant's paycheck for the extra

bereavement day. The claimant would not have taken the day off had he known the employer made a recording error.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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 in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The claimant relied upon the employer's records. The employer terminated the claimant and then changed its records. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's July 21, 2009 decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw