

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JON W HOLM
Claimant

APPEAL NO. 14A-UI-02043-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACT INC
Employer

OC: 01/26/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated February 14, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 17, 2014. Claimant participated. The employer participated by Ms. Debra Schreiber, Becky Chard and Michelle Heinz. Employer's Exhibits A through G were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jon Holm was employed by ACT, Inc. from September 14, 2009 until January 27, 2014 when he was discharged from employment. Mr. Holm was employed as a full-time Program Clerk II and was paid by the hour. His immediate supervisor was Michelle Heinz.

Mr. Holm was discharged on January 27, 2014 because of an incident that had taken place on January 14, 2014. On that date, the claimant's supervisor, Ms. Heinz, attempted to speak with the claimant about some difficulty that another employee had had in locating documentation at Mr. Holm's work station during his absence. Mr. Holm had undergone training in a new program for a one-week period and employees were aware that Mr. Holm had been away from his desk for that period. The focus of Ms. Heinz during the January 14, 2014 meeting was to explain to the claimant that another employee had had difficulty in finding a particular document and Ms. Heinz offered some organizational suggestions. Mr. Holm did not welcome the questioning or suggestions, but instead argued that his work area was organized and disagreed with any of Ms. Heinz's assertions that his work or how he performed it could be improved. Mr. Holm repeatedly asserted that his supervisor was "disciplining him." When Ms. Heinz replied that she was not, Mr. Holm repeatedly threatened to go to the company's Human Resource Department to "report" Ms. Heinz. After Ms. Heinz left, Mr. Holm went to Mr. Brentner, a training officer, to

complain of his supervisor's inquiry. Mr. Brentner reported that Mr. Holm was glaring at him and his demeanor was threatening. Because Mr. Holm had previously been warned and placed on probation on November 20, 2012 and on August 30, 2013, a decision was made to discharge Mr. Holm from his employment based upon the most recent incident. During the August 30, 2013 warning and probation, Mr. Holm had been warned to show respect for co-workers, to show self-control and to respond appropriately when questioned about work matters. The claimant was warned that further behavior of that type would result in his termination from employment.

It is the claimant's position that Ms. Heinz was unjustifiably criticizing his filing on January 14, 2014 and that the criticism was inappropriate because he had been assigned other training work by the company during the preceding week. Mr. Holm denies displaying inappropriate demeanor. It is claimant's further position that stating an employee's right to go to the company's Human Resource Department is not in and of itself misconduct.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, the evidence in the record establishes that Mr. Holm had been warned and placed upon disciplinary probation in the past for defensive argumentative behavior with other hourly employees and company management. Mr. Holm had been placed upon 30 days disciplinary probation and warned that in the future the company would expect him to be considerate, show self-control and to respond appropriately to requests, other workers or management. Mr. Holm was further warned that failure to follow the warning could result in his termination from employment. (See Employer's Exhibit E). The issue of the claimant's demeanor and the manner that he worked with other employees had also been addressed in another warning and in a performance improvement plan that had been given to Mr. Holm prior to the incident that occurred on January 14, 2014.

During the January 14, 2014, incident, the claimant's supervisor was making inquiry about a document that could not be easily located by another employee while Mr. Holm had been absent for training with the company. Although Ms. Heinz stated that her intention was not to issue a disciplinary action but only to offer some suggestions about organization, Mr. Holm did not accept his supervisor's explanations but continued to argue and to threaten to "report" the supervisor to the company's Human Resource Department. After the meeting between the claimant and Ms. Heinz ended on January 14, 2014, the claimant went to a company training officer where Mr. Holm continued to vent about Ms. Heinz's perceived behavior. The training officer also considered Mr. Holm's demeanor at that time to be threatening and reported his meeting with Mr. Holm to company management as well.

For the reasons stated herein, the administrative law judge concludes that the employer has sustained its burden of proof in showing that the claimant's conduct showed a willful disregard for the employer's interests and standards of behavior that it had a right to expect of its employees under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated February 14, 2014, reference 01, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs