

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TODD W HEER
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BAKER ELECTRIC INC
ATTN SUSAN PELUSE
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DES MOINES IA 50315

Appeal Number: 04A-UI-11355-RT
OC: 05-23-04 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge for Misconduct
Section 96.4-6-a - Required Findings (Department or Director Approved Training)

STATEMENT OF THE CASE:

The claimant, Todd W. Heer, filed a timely appeal from an unemployment insurance decision dated October 13, 2004, reference 02, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on November 15, 2004 with the claimant participating. Larry Enga, shop superintendent, participated in the hearing for the employer, Baker Electric, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time apprentice electrician from May 13, 2004 until he was discharged on September 23, 2004. On the day before, September 22, 2004, the claimant's journeyman and foreman got into a dispute which affected the claimant when he received a warning the next day, September 23, 2004. However, the claimant was not involved in the dispute between the journeyman and the foreman. The claimant had been somewhat displeased with the work he was assigned to do so and he consulted the employer's witness, Larry Enga, shop superintendent. The claimant brought up his separation. Because the claimant was in an apprenticeship program, he could not quit but had to be terminated or discharged. Mr. Enga agreed that the claimant should separate and, therefore, discharged the claimant alleging, among other things, attitude and insubordination. Part of the attitude and insubordination was the claimant's dissatisfaction with his work and his initiation of separation discussions. The claimant was approved for Department Approved Training for two different weeks, and attended Department Approved Training for the two weeks. The first Department Approved Training occurred in benefit week ending May 29, 2004 and the second Department Approved Training occurred from October 4 through October 8, 2004 or benefit week ending October 9, 2004. Pursuant to his claim for unemployment insurance benefits filed effective May 23, 2004 and reopened effective September 26, 2004 and October 3, 2004, the claimant has only applied for two weeks of benefits. For benefit week ending May 29, 2004, he received unemployment insurance benefits in the amount of \$322.00. For benefit week ending October 9, 2004, the claimant received no benefits being shown as disqualified as a result of a discharge. The benefits the claimant received have not been charged to the account of the employer herein.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties testified, and the administrative law judge concludes, that the claimant was discharged on September 23, 2004. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. It is well established that the employer has the burden to prove disqualifying misconduct. See Iowa Code section 96.6(2) and Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982) and its progeny. The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. This is an unusual case. The claimant was, at least, somewhat unhappy with the work he was being assigned and finally, after a dispute between his journeyman and foreman, he consulted the employer's witness, Larry Enga, shop superintendent. The claimant and Mr. Enga agreed that the claimant should separate. However, because the claimant was in an apprenticeship program, he could not quit. Therefore, Mr. Enga discharged the claimant. The reasons given for this discharge were attitude and insubordination. Mr. Enga testified that part of the claimant's attitude and insubordination dealt with the fact that he wanted to be separated from his employment and could not quit. The balance of the evidence for the claimant's attitude and insubordination had to do with the claimant's not being happy with his work and always looking for something different. However, Mr. Enga testified that the claimant was a good worker.

The administrative law judge must conclude on the evidence here that the employer has not demonstrated by a preponderance of the evidence any deliberate acts or omissions on the part of the claimant constituting a material breach of his duties and obligations arising out of his worker's contract of employment or that evince a willful or wanton disregard of the employer's interests or that are carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. Being displeased with the work and requesting other work and discussing a separation is not disqualifying misconduct. It appears that the parties agreed to separate but the separation had to be and was a discharge. Under these circumstances, the administrative law judge is constrained to conclude that the employer has not demonstrated by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged but not for disqualifying misconduct, and, as a consequence, he is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided he is otherwise eligible.

Iowa Code section 96.4-6-a-b provides:

6. a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

b. An otherwise eligible individual shall not be denied benefits for a week because the individual is in training approved under 19 U.S.C. § 2296(a), as amended by section 2506 of the federal Omnibus Budget Reconciliation Act of 1981, because the individual leaves work which is not suitable employment to enter the approved training, or because of the application of subsection 3 of this section or section 96.5, subsection 3, or a federal unemployment insurance law administered by the department relating to availability for work, active search for work, or refusal to accept work.

For purposes of this paragraph, "suitable employment" means work of a substantially equal or higher skill level than an individual's past adversely affected employment, as defined in 19 U.S.C. § 2319(l), if weekly wages for the work are not less than eighty percent of the individual's average weekly wage.

The administrative law judge concludes that the claimant was twice approved for and properly and appropriately attended Department Approved Training, for benefit week ending May 29, 2004 and October 9, 2004. During these weeks, the claimant does not have to be available and earnestly and actively seeking work and, therefore, any unemployment insurance benefits which the claimant is entitled shall not be charged to the account of the employer herein. Accordingly, the administrative law judge concludes that the claimant is entitled to receive unemployment insurance benefits for benefit week ending October 9, 2004 but such benefits shall not be charged to the account of the employer herein because he was attending Department Approved Training.

DECISION:

The representative's decision of October 13, 2004, reference 02, is reversed. The claimant, Todd W. Heer, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible, because he was discharged but not for disqualifying misconduct. The claimant has only applied for two weeks of benefits, benefit week ending May 29, 2004, which he received, and for benefit week ending October 9, 2004, which he did not receive. The administrative law judge concludes that the claimant is entitled to receive unemployment insurance benefits for benefit week ending October 9, 2004 but that those benefits shall not be charged to the account of the employer herein because the claimant was, during that week, in Department Approved Training and appropriately attended such training.

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