

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAY E MORRISON
Claimant

B R STORES INC
SUPER SAVER/ALPS
Employer

APPEAL NO. 11A-UI-07549-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/08/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated June 2, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held in Council Bluffs, Iowa, on July 21, 2011. The claimant participated personally. Appearing as a witness for the claimant was Ms. Linda Morrison, the claimant's mother. Although duly notified, the employer did not respond to the notice of hearing and did not appear.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Ray Morrison was employed by B R Stores Inc. for approximately four and one-half years before being discharged on May 8, 2011. Mr. Morrison worked as a part-time night stocker and was paid by the hour.

Mr. Morrison had previously been employed by B R Stores in a full-time capacity. At the claimant's request he was transferred to part-time work because of medical issues and disabilities.

On the evening of May 8, 2011, Mr. Morrison believed that he was exceeding the permissible number of hours he was allowed to work in his part-time capacity and requested permission to leave work from the manager on duty. The claimant testified that the manager "Jeff" said "okay" and the claimant left believing that he had permission to leave.

When Mr. Morrison attempted to report for scheduled work the following evening he was told by "Jeff" that he had been "fired" because he had left without permission. Mr. Morrison disputed his discharge and the reason for it bringing the matter up the chain of command to the store

director "Steve." Although the store director promised that he would look into the matter and call Mr. Morrison back, the employer had no further contact with the claimant.

REASONING AND CONCLUSIONS OF LAW:

Having considered the evidence in the record, the administrative law judge concludes that the claimant was discharged and did not choose to voluntarily leave his employment with this company. The question then becomes whether the employer has sustained its burden of proof in establishing sufficient misconduct to disqualify the claimant from receiving unemployment insurance benefits. The employer has 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.

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 is 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. App. 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in a disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this matter the claimant appeared personally and provided sworn testimony testifying that he did not become disruptive on the evening of May 8, 2011 and further testifying that he had requested permission to leave work at the completion of his work shift and that permission had been specifically granted by the manager on duty. The claimant further testified that when he was informed that he had been discharged from employment he disputed the matter bringing the matter to the attention of the store director who promised to look into the matter.

The administrative law judge finds the claimant to be a credible witness and finds that his testimony is not inherently improbable. There being no evidence in the record to the contrary, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing disqualifying job misconduct sufficient to warrant the denial of unemployment insurance benefits. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated June 2, 2011, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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