

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL R COPIC
Claimant

APPEAL NO. 13A-UI-00741-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEE ZEE INC
Employer

OC: 12/09/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated January 11, 2013, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 19, 2013. Claimant participated. Employer's witness was not available at the telephone number provided. Two messages were left.

ISSUE:

The issue is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Michael Copic was employed by Dee Zee, Inc. from April 16, 2012 until December 5, 2012 when he was discharged from employment. Mr. Copic was employed as a full-time forklift operator and was paid by the hour. His immediate supervisor was Rena Thornton, Warehouse Manager.

Mr. Copic was discharged on December 5, 2012 after the claimant had been unable to report for scheduled work due to the serious medical condition of his son. Mr. Copic had informed his immediate supervisor of his need to be absent and the reasons for it. Claimant's supervisor had verified that his absence was approved and required only minimal contact from Mr. Copic to keep his supervisor informed of the child's medical progress and Mr. Copic's expected return date.

Mr. Copic contacted his immediate supervisor on a number of occasions as directed and was not given any indication that his reasons for absence or the amount of contact was unacceptable. Mr. Copic last directly spoke with his immediate supervisor on or about December 1 and at that time was given no indication that his job was not being held open for him or there was any problem with his employment in any manner. On December 5 when the claimant went to pick up his paycheck, he was informed by the company's human resource department that he had been discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

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

Allegations of misconduct without additional evidence shall not be sufficient to result in 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 evidence in the record establishes that Mr. Copic did not voluntarily quit his employment but that the claimant was discharged by the employer on or about December 5, 2012. The evidence in the record establishes based upon the claimant's sworn testimony that Mr. Copic had informed his immediate supervisor of his need to be absent because of Mr. Copic's son's serious medical condition. Claimant testified that the permission to be absent had been approved by his supervisor and that he had been specifically told that he did not need to call in each day but only occasionally to keep the supervisor updated about Mr. Copic's son's medical condition and progress. The claimant last directly spoke with his immediate supervisor approximately four days before his discharge and was not given any indication at that time that he would be discharged or that he was not providing sufficient information to the employer about his ongoing absences. Based upon these statements and statements previously made to him by his supervisor, Mr. Copic reasonably concluded that he was keeping the employer reasonably informed of his absences and the reasons for it and his absences had been authorized by his supervisor. When the claimant went to pick up his paycheck on December 5, 2012 he was informed that he had been discharged from employment.

The question is not whether the employer has a right to discharge an employee for these reasons but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Mr. Copic may have been a sound decision from a management viewpoint, the evidence in the record does not establish intentional, disqualifying 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 January 11, 2013, reference 01, is reversed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs