

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REGINALD E TREE
Claimant

APPEAL NO. 08A-UI-02237-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMPASS ONE LLC
Employer

**OC: 02/26/08 R: 02
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Reginald Tree, filed an appeal from a decision dated February 26, 2008, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on March 31, 2008. The claimant participated on his own behalf. The employer, Compass One, participated by Resident District Manager Kris Klingler. Exhibits One and Two were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Reginald Tree was employed by Compass One from March 16, 2007 until January 31, 2008, as a full-time lead cook. He received a written warning on October 18, 2007, which he refused to sign. He was accused of insubordination and use of inappropriate language to a supervisor, which he denied.

On January 31, 2008, the claimant was again accused of insubordination and use of inappropriate language to a supervisor, for which he was fired. Mr. Tree denied using any profanity to a supervisor or having any "attitude" toward him.

REASONING AND CONCLUSIONS OF LAW:

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 to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the employer has not presented any first-hand, eyewitness testimony to the event which precipitated the decision to discharge. There are also no written statements submitted by any witnesses. As the claimant has denied the allegations made against him, the administrative law judge must conclude the employer has failed to rebut the claimant's denial of wrong doing and has not met its burden of proof. Disqualification may not be imposed.

DECISION:

The representative's decision of February 26, 2008, reference 01, is reversed. Reginald Tree is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs