

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAXX G MICHELFELDER
Claimant

APPEAL NO. 07A-UI-09769-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA FIRE CONTROL LLC
Employer

OC: 09/23/07 R: 01
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Iowa Fire Control filed an appeal from a representative's decision dated October 17, 2007, reference 01, which held that no disqualification would be imposed regarding Maxx Michelfelder's separation from employment. After due notice was issued, a hearing was held by telephone on November 5, 2007. Mr. Michelfelder participated personally. The employer participated by Sandy Bratland, Manager. Exhibits One through Four were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Michelfelder was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Michelfelder was employed by Iowa Fire Control from June 18, 2006 until September 20, 2007. He was last employed full time as a crew leader, a position he assumed on June 18, 2007. The employer's business consists of cleaning kitchen hoods in restaurants and other commercial cooking establishments. Part of Mr. Michelfelder's job was to flip fans, which consisted of cleaning the exhaust fans and connecting ductwork. The accumulation of grease in these areas can create a fire hazard if not cleaned regularly and properly. He was also to clean the roof areas surrounding the exhaust fans. He was discharged from the employment because he was not flipping fans and cleaning as required.

The employer spoke with Mr. Michelfelder on August 16 because he was not flipping fans as required. Some of his failures were due to weather conditions, as he could not work on the roof in the rain. Out of seven jobs, he had only flipped the fans on three occasions. He was verbally warned that he had to flip the fans. He failed to adequately clean the outside of fans on August 20 and 22. A roof that he cleaned on August 22 had to be redone. He did not clean the fan at Olive Garden on August 23 because there was lightning and he could not work on the roof. Mr. Michelfelder called a coworker on August 26 to ask how to flip the fans at Red Rooster. He was given instructions but still did not flip the fans because he did not understand

the instructions. Mr. Michelfelder usually left notes for the manager if there were problems completing his work.

The employer posted a notice on August 28 stating that crews would lose their bonus if they failed to flip fans or clean roofs. Mr. Michelfelder did not flip a fan on August 28 because of lightning. He failed to flip the fan at Sister Sarah's on September 2 because the fan was secured to the building with tar, preventing him from flipping it over to clean. The decision to discharge Mr. Michelfelder was due to the fact that he failed to flip any of the three fans at Carlos O'Kelly's on September 19. He could not figure out how to clean the areas because of the shape of the ductwork. He believed he would have standing water in the ductwork because of its L-shape. He was notified of his discharge on September 20, 2007.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Michelfelder was discharged for not performing required duties. He knew he was required to flip fans and clean the roof areas. He was verbally warned on August 16 that he needed to flip fans as required by his job. In spite of the warning, he failed to clean the outside of fans on August 20 and 22 and failed to adequately clean a roof on August 22. He had good cause for not flipping the fan at Olive Garden on August 23 due to lightning. He did not flip the three fans at Red Rooster on August 26 because he did not understand the instructions on how to do so.

Mr. Michelfelder and other crew members were warned on August 28 that flipping and cleaning had to be done. The notice was in the form of a posting directed to all crew members. Mr. Michelfelder's failure to flip fans on September 19 was due to what he perceived as a problem with the shape of the ductwork. He cited various problems that prevented him from flipping fans on the occasions identified on Exhibit 1. Employer's Exhibit 1 lists the dates and locations on which Mr. Michelfelder failed to flip fans. However, the employer acknowledged that he tried to flip fans at Joe's Crab Shack on August 28 but was unable to do so. If there was problem that prevented him from flipping at that location but the failure is still listed on Exhibit 1, the administrative law judge must presume that there may be other occasions on the list where he also had justification for not flipping. Inasmuch as the employer had the burden of proof, any doubt will be resolved in Mr. Michelfelder's favor. The employer did not cite any of the notes Mr. Michelfelder may have left explaining why certain tasks were not performed.

For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has not been established by the evidence. The evidence failed to establish to the satisfaction of the administrative law judge that Mr. Michelfelder's failures were due to deliberate misconduct rather circumstances beyond his control. The isolated occasions on which he failed to adequately clean the fan and roof represented only isolated instances of negligence. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). Benefits are allowed.

DECISION:

The representative's decision dated October 17, 2007, reference 01, is hereby affirmed. Mr. Michelfelder was discharged, but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw