

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEITH A PARSONS
Claimant

APPEAL NO. 11A-UI-14643-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MADDEN LTD
Employer

OC: 10/02/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Madden Ltd. filed a timely appeal from a representative's decision dated November 3, 2011, reference 01, that held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was held on December 6, 2011. The claimant participated personally. The employer participated by Mr. Al Irey, General Manager.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Keith Parsons was employed by Madden Ltd. From February 23, 2011 until October 7, 2011 when he was discharged from employment. Mr. Parsons was employed as a part-time mechanics helper and was paid by the hour. Mr. Parsons averaged approximately 30 hours of work per week. The claimant was also employed part time by the company owner separately and distinct from Madden Ltd. Claimant's immediate supervisor was the general manager, Mr. Al Irey.

Mr. Parsons was discharged based upon the company's general manager's conclusion that items found in Mr. Parsons' work area were for the purpose of manufacturing methamphetamine.

On October 7 other employees alerted Mr. Irey to the possibility that Mr. Parsons was storing chemicals in his work area used to manufacture methamphetamine. The general manager went to the claimant's work area and discovered lithium batteries, Coleman stove fuel, salt, Drano and mason-type jars with a residue in them. The general manager also found numerous pieces of tissue or paper towel with burnt portions. Based upon information supplied by other employees and the general notoriety given to the manufacture of illegal drugs, Mr. Irey concluded that the claimant's intent was to manufacture meth. Mr. Irey had discovered an odd plastic container outside the facility earlier in the week and felt that that was also associated with the manufacture of meth. Because the most recent items were found in the claimant's work

area and tracks on the floor showed that the claimant had been at the facility after working hours, the general manager concluded that the items pointed out by the other employees were intended for an illegal purpose and made a decision to discharge Mr. Parsons from his employment with the company. A majority of the claimant's tools and personal belongings were placed outside the facility and the claimant was informed that he was discharged when he reported to work. Mr. Parsons was angry at his discharge and demanded that his other belongings still held by the employer be surrendered to him.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is not whether the employer made a reasonable business decision to terminate Mr. Parsons from his employment but 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 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 unable to furnish sufficient evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

Iowa section 730.5 provides the authority under which a private sector employer doing business in Iowa may conduct drug or alcohol testing of employees.

In the present case the employer had reasonable suspicion to request drug testing but elected not to do so. The company's general manager suspected that the items found in the claimant's work area may be used or were being prepared to be used to make an illegal substance. The items taken individually were not illegal for the claimant to possess. However, taken collectively the employer may have been reasonable in suspecting that Mr. Parsons was involved in the manufacture or use of illegal substances. The employer did not confirm its suspicions, however, by having the claimant drug tested or turning the items over to the local police department to be analyzed or used to investigate the employer's suspicions. The company's general manager instead elected to discharge Mr. Parsons based upon its suspicions as to what Mr. Parsons' intent was.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for these reasons but whether the discharge is disqualifying under the provision of the Employment Security Act. While the decision to terminate Mr. Parsons may have been a good decision from a management viewpoint, the evidence in the record does not sufficiently establish intentional misconduct to the degree necessary to result in a disqualification from unemployment insurance benefits. While the employer's suspicions may have been reasonable, they were not verified prior to the claimant's discharge. The claimant was discharged based upon what the employer considered his future intention to be. For these reasons the administrative law judge concludes that the claimant is not disqualified from the receipt of unemployment insurance benefits.

DECISION:

The representative's decision dated November 3, 2011, reference 01, is affirmed. 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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