

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN WILSON
Claimant

APPEAL NO: 12A-UI-04382-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MDR MANAGEMENT INC
Employer

OC: 03-04-12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 10, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 9, 2012. The claimant participated in the hearing. Tonja Helm, regional manager; Ron White, vice-president; Don White, vice-president; and Eryk Morgan, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time security officer for MDR Management from August 23, 2011 to March 6, 2012. There was a mix-up with the claimant's February 6, 2012, paycheck and he was only paid for 8 hours instead of the 40 hours he actually worked. Additionally, his child support payment was not deducted from the check he did receive on that date and sent to Child Support Recovery. Three days later, General Manager Eryk Morgan paid the claimant part of what he was owed out of petty cash and gave him the remainder from petty cash a few days later. The employer then sent the claimant a check, minus part of his child support payment, which he returned to Mr. Morgan to repay the loan from petty cash. The employer should have taken an additional \$91.58 out of the February 6, 2012 check, because it only deducted \$45.29 out of that check instead of the full amount of \$136.60 for child support. The employer only took out \$136.80 from the claimant's February 21, 2012, check and therefore deducted \$228.31 from his March 5, 2012, check to catch up on the additional \$91.51 owed to Child Support Recovery. After those three checks, the claimant's pay was correct and all of his child support had been deducted and paid to Child Support Recovery. The employer has cancelled checks from Child Support Recovery acknowledging the payments, but the claimant believed it did not make all of his child support payments, because Child Support Recovery told him he was behind for that period of time. The claimant contends the employer took an extra \$91.51 and did not pay it to Child Support Recovery. The claimant called the corporate office February 8, 2012, and left a "horrible" voice mail message for Vice-President Ron White's

secretary that was very loud and obnoxious and demanded an immediate response. The secretary was very upset by the message, as was Ron White, and Ron White called Mr. Morgan and told him he did not appreciate the claimant's actions toward his secretary. On March 6, 2012, Regional Manager Tonja Helm was at the motel in Council Bluffs from the corporate office in Kansas City. Ms. Helm had received an email from Ron White stating he could not get the claimant to understand the check situation and asking Ms. Helm to speak to him about his concerns. Ron White had tried to explain the payments to the claimant again, but he would not accept Ron White's explanation and finally Ron White ended the conversation because of the claimant's volatility and instructed him to speak to Ms. Helm. She was in Mr. Morgan's office when the claimant came to the door and was very abrupt, rude, and obnoxious, and Ms. Helm told him she would not speak to him until he calmed down. The claimant was inches from Ms. Helm's face, yelling this is "fucking bullshit" several times. Ms. Helm was nervous about sitting with the claimant because of his behavior but did so because Mr. Morgan was present, which made her feel more safe, and started reviewing the claimant's checks with him. The claimant remained very loud and upset while Ms. Helm tried to show him what happened with the checks. He became more belligerent and was standing over Ms. Helm's shoulder so close to her that he was touching her. Ms. Helm told the claimant to back off because she felt threatened by his standing over her screaming. The claimant still could not understand the check situation, so Ms. Helm called Ron White and told him she felt very uncomfortable, unsafe and threatened due to the claimant's behavior and could not get the claimant to understand that the checks were reconciled. She told the claimant she could not handle his behavior and did not know how to deal with him. Ron White tried to explain that the pay check stubs were correct and the claimant told Ron White it was "fucking bullshit." The claimant was yelling and out of control. While Ron White was listening to the claimant on his speakerphone, Vice-President Don White was approaching his office and could hear the claimant from outside Ron White's door. Don White took over the conversation and told the claimant he would not allow anymore abusive, argumentative, or obscene behavior from him. Don White then notified the claimant his employment was terminated due to his behavior.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

While the claimant believes the employer did not pay him correctly and missed a child support payment, the employer's records show it did rectify the error and has cancelled checks showing Child Support Recovery received the payments. The claimant insists his child support payment was not paid; but, given the employer's documentation of the way it made the proper adjustments to his three checks in question, it is possible Child Support Recovery made the error. Even though the claimant believes the employer did not properly pay him, that does not give him the right to be threatening, belligerent, rude, and overbearing and to use profanity when speaking with superiors within the company, including Ms. Helm and Ron and Don White. The claimant's response was disproportionate to the situation. Regardless of whether he believed he was wronged, his behavior was threatening, inappropriate, unacceptable and unprofessional. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The April 10, 2012, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw