

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOE R CLINE

Claimant

LENSCRAFTERS INC

Employer

APPEAL NO. 11A-UI-09803-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/12/11

Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Joe R. Cline filed a timely appeal from an unemployment insurance decision dated July 20, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, on August 31, 2011 with Mr. Cline participating and being represented by Kodi A. Brotherson, Attorney at Law. The employer, Lenscrafters, Inc., had notified the agency that it did not intend to participate.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Joe R. Cline was employed by Lenscrafters, Inc. from May 2003 until he was discharged June 13, 2011. He last worked as a dispensing optician. Store Manager Marlys Foster discharged Mr. Cline for allegedly making inappropriate comments to the regional vice president and regional director of operations. The statements had been made approximately three weeks prior to the discharge. Mr. Cline asked Ms. Foster what the comments had been, but she declined to respond.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with his employment. 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. See Iowa Code section 96.6-2. As noted above, the employer chose not to participate in the hearing. The claimant's testimony does not establish that the final incident leading to discharge was either current or misconduct. No disqualification may be imposed based upon this evidence.

DECISION:

The unemployment insurance decision dated July 20, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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