

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THEODORE J ULMER
Claimant

APPEAL NO. 11A-UI-12263-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADAMS MOTOR COMPANY
Employer

**OC: 07/24/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 6, 2011, reference 01, that held he was discharged for misconduct on July 27, 2011, and which denied benefits. A telephone hearing was held on October 11, 2011. The claimant participated. Bob Adams, Owner/Manager, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment on January 31, 2011, and last worked for the employer as a full-time service writer on July 26, 2011. The employer sent claimant home on July 25 during the course of a closed-door meeting and discharged him on July 26.

Claimant was salaried at \$30,000 a year at the time of his hire, and he was paying rent to the employer while living with the owner's son. In late April or early May, claimant complained the employer was withholding \$6.23 a week from his paycheck as payment for a uniform shirt. He continued to raise this issue and after several ongoing discussions, he believed he was entitled to a re-imbusement, as he had not authorized the payment. Claimant had put the employer on hold about a pay increase in June due to a pending bankruptcy that might affect the action. A week or so before the July 25 meeting, he moved out from the owner's son's apartment. Child support recovery had been withholding \$125 bi-weekly from claimant's pay.

On July 25, claimant had a verbal confrontation with the employer/owner that the latter party believes was a verbal attack against him, his family, and the business. Claimant told him that he was going to going to court, if necessary, to stop the withholding of his pay for uniforms, which he never agreed to. He said that he was no longer interested in babysitting the owner's

22-year-old son. He was going to contact GM (meaning General Motors) about the manner in which the dealership was run. Claimant was sent home for the day.

When the employer learned claimant had reported to work the next morning, he instructed a representative to tell him to leave or he would call law enforcement to have them do so. Sometime later, the employer called claimant and terminated his employment.

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on July 26, 2011.

The claimant's statements to the employer behind closed doors on July 25 are not verbal attacks that rise to the level of misconduct. The claimant had not been previously warned about his conduct. He had an ongoing issue with the employer withholding pay for uniforms, which is a legitimate question that deserved a definitive answer. A claimant response about resolving the issue in a legal forum is not misconduct, nor is the off-hand remark about babysitting his son.

While the claimant might have demonstrated a lack of respect for the employer-owner, his statements on July 25 were not insubordinate and do not constitute job-disqualifying misconduct.

DECISION:

The department decision dated September 6, 2011, reference 01, is reversed. The claimant was not discharged for misconduct on July 26, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw