

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLEN MOORE
Claimant

APPEAL NO. 12A-UI-03480-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS ENTERPRISES INC
Employer

**OC: 02/19/12
Claimant: Appellant (2)**

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated March 29, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 19, 2012. Claimant participated. The claimant was represented by Dennis McElwain, Attorney at Law. The employer participated Justin Dodge, the human resources generalist, and Roger Dickson, the operations manager. The employer was represented by John Henson of TALX. The record consists of the testimony of Justin Dodge; the testimony of Roger Dickson; the testimony of Allen Moore; and Employer's Exhibits 1-14..

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures ice cream at its facility in LeMars, Iowa. The claimant was hired as a general production worker on February 8, 1998. His last day of actual work was February 8, 2012. He was placed on suspension while an investigation was pending on an incident that occurred on February 7, 2012. The claimant knew his job was in jeopardy. He was terminated on February 20, 2012.

The incident that led to the claimant's termination occurred on February 7, 2012. Two machines jammed at the same time. One of these machines boxed lids and the other put containers for the ice cream in boxes, which were then sent to the area where the ice cream was packed. The claimant was very frustrated that another employee, Viet Tran, was not helping him. Mr. Tran just stood there and gave the claimant what the claimant perceived to be a funny look. The claimant grabbed Mr. Tran by the shirt collar. He did not injure Mr. Tran. Mr. Tran complained to his supervisor and a subsequent investigation was conducted by the employer.

The employer has written work rules that prohibit fighting or threatening violence in the workplace. (Exhibit 1) Harassment is also forbidden in the workplace. The claimant was aware of these rules on February 7, 2012.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors in judgment or discretion in isolated situations. The employer has the burden of proof to show misconduct.

The difficult issue in this case is whether the claimant's actions on February 7, 2012, rise to the level of disqualifying misconduct under Iowa unemployment insurance law. Employers clearly have an interest in promoting a safe workplace for all employees and no worker should feel threatened by the actions of co-workers. In this case, the evidence established that the claimant grabbed the collar of a co-worker. The claimant was frustrated because the co-worker was not helping out with jams in two machines. The claimant admitted that he did not use good judgment and he was very sorry for what he did. He did not intend to harm the co-employee and there is no evidence that Mr. Tran was injured other than a stretched collar and so red

marks. Mr. Tran said in his statement that the claimant swore at him but the claimant denies this.

The crucial missing evidence in this case is the testimony of Mr. Tran. Mr. Tran claimed that the claimant cursed him and pulled him by the shirt. This is contained in Mr. Tran's written statement. (Exhibit 11) The claimant says he only grabbed Mr. Tran by the shirt and did not use profanity. Mr. Tran's sworn testimony is important in order for the administrative law judge to determine how threatening the atmosphere was and whether there was verbal harassment of Mr. Tran. The claimant is credible when he testified that he did not threaten Mr. Tran or swear at him and that he was sorry for what he did by grabbing the collar. The administrative law judge cannot weigh the claimant's testimony against the testimony of Mr. Tran. Given the totality of the circumstances, and without in any way condoning the claimant's actions, the administrative law judge concludes that this was poor judgment on the part of the claimant as opposed to a deliberate attempt to harm or harass Mr. Tran. The administrative law judge is mindful that the claimant received a letter of reprimand back in 2009 for the way he handled a maintenance situation. This is the only other instance comparable to what occurred on February 7, 2012. Since there is insufficient evidence of misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated March 29, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css