

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD A KELLER
Claimant

APPEAL NO. 10A-UI-09041-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**RAVION INC
PRIME MART**
Employer

**OC: 05/16/10
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 14, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on August 11, 2010. Claimant participated. Employer participated through part-owner Shahid Chapha.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part time as a store clerk and was separated from employment on May 20, 2010. His last day of work was May 11, 2010. Claimant is allergic to mold and penicillin and was having reactions to the plugged up soda machine drain and moldy sink area. Employer delayed repairs until the contractor was done working on the employer's houses. After the work was supposedly done there was still a moldy baseboard in place, which triggered a seizure so claimant was medically excused from work May 11 through 18, 2010. On May 17 he presented the medical excuse to the employer but was not told to bring additional medical information about his mold allergies. While there he used his laptop to show the employer the recommended steps to clear the mold. He also helped a couple of customers when coworker William Smith (BJ) arrived and accused claimant of not being allergic to mold and interrupted claimant while he was trying to speak to the employer. BJ became upset and physically and verbally confronted claimant, who did not make physical contact with BJ. Claimant left the store after the police were called but notified the employer he would be available at home, about a block away. Aftab Chapha was present during the confrontation between claimant and BJ but his brother Shahid Chapha was not. Aftab Chapha did not participate in the hearing. Shahid arrived a few minutes after his brother called him and before the police arrived and gave a statement to the police as if he was present and claimed BJ was beaten, resulting in a bloody nose. Claimant was charged with simple assault, which is pending.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Since Shahid

Chapha was not present during the confrontation between claimant and BJ his testimony and police report is not reliable. Since claimant left the store when BJ escalated the encounter he did take the appropriate step to retreat and avoid further confrontation. Thus the employer has not established misconduct with respect to his conduct with coworker BJ. Nor has the employer established that he was instructed to provide additional medical information about his allergy or its work-relatedness, thus there was no misconduct related to this situation either. Benefits are allowed.

DECISION:

The June 14, 2010 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. The benefits withheld shall be paid, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css