IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

GREG A NATH
1710 WILLIS AVE
PERRY IA 50220

CHIEF PRINTING COMPANY
1323 2ND ST
PO BOX 98
PERRY IA 50220-0098

Appeal Number: 05A-UI-02181-R
OC: 02/06/05 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Greg A. Nath, filed a timely appeal from an unemployment insurance decision dated March 2, 2005, reference 01, denying unemployment insurance benefits to him. After due notice was issued, an in-person hearing was held in Des Moines, Iowa, at the claimant's request, on March 22, 2005, with the claimant participating. Lori Lott, Publisher and Co-Owner, participated in the hearing for the employer, Chief Printing Company. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full time managing editor from April 12, 1999 until he was discharged on January 27, 2005. The claimant was a managing editor throughout his employment. The employer's witness, Lori Lott, became publisher in 2003. Previously, the father of Ms. Lott had been the publisher. The employer publishes both a newspaper in Perry, Iowa, and a shopper. Initially, both the claimant and Ms. Lott agreed that the newspaper should go regional and Ms. Lott supported the claimant in his efforts. More recently, the two began to have philosophical differences about the content of the newspaper and had some disagreements thereto.

In early October 2004, Ms. Lott wanted the claimant to begin a weekly feature concerning people and/or businesses in Perry, Iowa. Ms. Lott also wanted the claimant to put on the front page of the sports section all Perry, Iowa sports. The claimant agreed with the weekly feature, but disagreed with the sports matter. The two had some other disagreements at this meeting. The claimant was not prepared for the discussions and was surprised by the discussions that ensued at this meeting. The claimant attempted to implement the changes requested by Ms. Lott. In fact, the claimant attempted to implement all changes Ms. Lott requested and never refused or failed to implement any changes requested by her. However, he did voice disagreements with some of the things that Ms. Lott wanted.

In early January 2005, the two had another disagreement over putting an article and a picture of a youth group in the newspaper. On the day that Ms. Lott requested the inclusion of the picture and article the claimant was in the process of putting the finishing touches on the newspaper and it was to be printed yet that day. He informed Ms. Lott that by adding the article and the picture it would delay printing and cause overtime to the employees. Earlier, the claimant had been told to avoid overtime for employees. Ms. Lott insisted that the picture and article be included and the claimant included it. Shortly thereafter, Ms. Lott wrote the claimant a letter indicating that she was giving him until the end of the month of January 2005 to remain in his position. She began interviewing new candidates and in fact had actually started the hiring process in October after the first disagreement. By letter dated January 21, 2005, the claimant asked Ms. Lott to reconsider and she refused because she had already hired a replacement.

Ms. Lott was the publisher and in general she left it up to the claimant what was to be included in the newspaper. She did not take a continuingly active role in what was in the newspaper. The claimant never refused or failed to put in the newspaper anything that Ms. Lott wished. The claimant never received any real warnings or disciplines for any of these matters.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties agreed, and the administrative law judge concludes, that the claimant was discharged on January 27, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. See Iowa Code section 96.6(2) and Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982) and its progeny. The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Both witnesses testified credibly. The employer's witness, Lori Lott, Publisher and Co-Owner, testified that the claimant was discharged primarily because of a difference in philosophy concerning the contents of the newspaper. The claimant seemed to agree. Initially, the two had agreed to a regional coverage of the newspaper and Ms. Lott had supported the claimant. However, Ms. Lott changed her mind and wanted to focus on Perry, Iowa, and the claimant apparently disagreed. However, there is no evidence that the claimant ever refused or failed to implement any changes insisted upon by Ms. Lott. It does appear that they had disagreements, perhaps arguments, about the content of the newspaper, but the claimant always acquiesced and followed the demands of Ms. Lott. In general, Ms. Lott left to the claimant to decide what was in the newspaper and did not, at least continuously on a daily basis, interfere with the newspaper, but he did have some directions that she wished the newspaper to take. Although the claimant may have disagreed with those directions he tried to satisfy Ms. Lott. There is no real evidence that the claimant actually obstructed the goals of Ms. Lott. Ms. Lott initially indicated that he had not and the claimant also so testified. Later, Ms. Lott testified that the claimant did obstruct her goals for the newspaper as a result of the disagreements. However,

Ms. Lott was unable to specifically state exactly what it was that she wanted that the claimant refused or failed to implement.

Under these circumstances, the administrative law judge is constrained to conclude that there is not a preponderance of the evidence that the claimant committed any deliberate acts or omissions constituting a material breach of his duties and/or evinced a willful or wanton disregard of the employer's interests and/or were carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. The administrative law judge does not believe that a disagreement in philosophy is disqualifying misconduct so long as the claimant does not obstruct or fail or refuse to carry out ultimately the instructions of his superior. The claimant here did not. At one point, Ms. Lott testified that she decided it was time for a change and it was her "call." This is really the crux of the matter. No doubt the employer can discharge an employee when a change is believed to be necessary. However, that employee can only be denied unemployment insurance benefits if the discharge is for disqualifying misconduct. The administrative law judge concludes that there is not a preponderance of the evidence of any disqualifying misconduct on the part of the claimant. Therefore, the administrative law judge concludes that the claimant was discharged but not for disqualifying misconduct and, as a consequence, he is not disqualified to receive unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits and misconduct to support a disqualification from unemployment insurance benefits must be substantial in nature, including the evidence therefore. Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395, 398 (Iowa App. 1989). The administrative law judge concludes that there is insufficient evidence here of substantial misconduct on the part of the claimant to warrant his disqualification to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant provided he is otherwise eligible.

DECISION:

The representative's decision dated March 2, 2005, reference 01, is reversed. The claimant, Greg A. Nath, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible, because he was discharged but not for disqualifying misconduct.

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