

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH K MILTON
Claimant

APPEAL NO. 12A-UI-10683-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**AVENTURE STAFFING & PROFESSIONAL
SERVICES**
Employer

OC: 07/15/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kenneth Milton (claimant) appealed a representative's August 21, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Aventure Staffing & Professional Services (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 28, 2012. The claimant participated personally. The employer participated by Kayla Neuhalfen, Human Resources Representative, and Christine Shinall, Branch Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 25, 2010, as a temporary worker. He worked a various assignments and the employer thought he was good worker. At the time of hire the claimant completed an application for hire where he disclosed felony convictions when it asked him to list felony convictions.

Later on November 1, 2011, the claimant was again asked to complete an application. He was asked if he had been convicted of a felony and the nature of the felony. The claimant disclosed his felony convictions. After completing the form an interviewer asked the claimant questions and wrote those answers on a questionnaire form. The interview asked the claimant about misdemeanors. The claimant indicated yes but they were old. The interview said she would not worry about them and wrote on the questionnaire "no misdemeanors". The claimant did not review or sign the questionnaire.

On July 6, 2012, the employer was going to place the claimant at a new assignment. The client employer required a background check and the employer discovered the claimant had a 1998

misdeemeanor on his record. The employer terminated the claimant on July 6, 2012, for not disclosing the misdemeanor.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

871 IAC 24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

Misconduct serious enough to warrant a discharge is not necessarily serious enough to warrant a denial of unemployment benefits. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). In the present case, the employer may legitimately have been

concerned about the claimant's past criminal record. However, there is no evidence the claimant falsified his job application or that his record affected the employer in any adverse way.

While understanding the concerns of the employer, the judge does not believe it has established the information could have exposed it or its workers to harm or liability sufficient to warrant a disqualification of unemployment benefits. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 21, 2012 decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs