

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSIAH WILDEBOUR
Claimant

APPEAL NO: 12A-UI-02973-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PROGRESSIVE LOGISTICS SERVICES
Employer

OC: 02/05/12
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Progressive Logistics Services (employer) appealed an unemployment insurance decision dated March 12, 2012, reference 01, which held that Josiah Wildebour (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 9, 2012. The claimant participated in the hearing. The employer participated through Troy Beatty, facility manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time freight handler from April 4, 2011 through February 4, 2012, when he was discharged. The employees work with Target employees in the Target warehouse. The employer issued the claimant a first and final written warning for a negative attitude. Co-employees complained that he would not help them. The employer witness testified that the claimant "displayed his discontent without actually saying no." The claimant testified that he did not realize this warning put his job in jeopardy.

The claimant was discharged on February 4, 2012 for violating work rules Number 6 and Number 14. Rule Number 6 is the failure to follow management instructions and Rule Number 14 is the use of indecent language on company or customer property. The employer offered hearsay evidence that the claimant's supervisor told him to go home three different times on February 3, 2012 and the claimant refused each time and then said it was "bullshit." The claimant denied those allegations and said that his supervisor was asking for volunteers to go home on February 3, 2012. He only had two volunteers and apparently needed one more, so he told the claimant to go home, but the claimant wanted it known that he did not volunteer in case the supervisor assumed he had. The supervisor then told the claimant he was being sent

home for his work performance on February 2, 2012, but the claimant was unaware of any problems from that day. The claimant denies using profanity and his supervisor was not available to testify.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on February 4, 2012 for reportedly using profanity and refusing his supervisor's directives. He denies both counts and the employer only offered hearsay testimony to dispute that. The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. Benefits are allowed.

DECISION:

The unemployment insurance decision dated March 12, 2012, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw