

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD S YODER
Claimant

APPEAL NO. 12A-UI-02416-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE DANA COMPANY
Employer

OC: 010812
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The Dana Company (employer) appealed a representative's February 28, 2012 decision (reference 01) that concluded Richard Yoder (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 27, 2012. The claimant participated personally. The employer participated by Dana Ramundt, President.

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 September 1, 2009, as a full-time insurance producer. The claimant signed for receipt of the employer's handbook. The claimant understood that Mr. Holland was his supervisor and Mr. Ramundt was the owner. The claimant was to report to his supervisor every day. The supervisor told the claimant that he did not need to report to the office every day. In January 2011, the claimant formed a partnership with a co-worker. The coworker kept the claimant informed while the claimant kept an office in another building where the claimant was a part-time employee for Ameriprise. The claimant continued to work for the employer and spoke daily to his supervisor.

In November 2011, the claimant met with the owner. The owner was unhappy with the situation and wanted to change the nature of the employment relationship. The employer indicated it would make the claimant an offer in a letter that it would send to the claimant in the future. No offer was ever sent. On December 28, 2011, the employer terminated the claimant.

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.

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). An employer may discharge an employee for any number of reasons or no reason at all, 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. Inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

In this case the claimant thought that his working relationship with the employer was acceptable because his supervisor said it was acceptable. The employer never issued the claimant a written warning indicating what behavior he should change and what consequences would occur if the particular behavior continued.

The administrative law judge understands that this working arrangement was novel but the employer did not offer clear evidence to show that the claimant was given notice that the behavior was not acceptable. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's February 28, 2012 decision (reference 01) is affirmed. 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/css