

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALAN J HAMMELL**  
Claimant

**APPEAL NO. 11A-UI-03795-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE HON COMPANY**  
Employer

**OC: 02/20/11  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated March 28, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on April 14, 2011. The claimant participated personally. Participating as witnesses for the claimant were Leanne Johnson and Stacie Howell. The employer participated by Sandra Linsin, hearing representative, and witness Chad Schmidt, manager. Employer's Exhibits One through Seven were received into evidence.

**ISSUE:**

At issue is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Alan Hammell was employed by The HON Company from January 9, 1995, until February 22, 2011, when he was discharged by telephone. Mr. Hammell held the position of production group leader and was paid by salary.

At the time of discharge by telephone, Mr. Hammell was told that he was being terminated because of "overall performance." The employer would not elaborate on the reasons for the claimant's discharge.

The claimant was discharged because a number of disgruntled employees had complained about Mr. Hammell's demeanor and the manner in which he interacted with company employees. The employer took statements from a number of employees without interviewing the claimant or other individuals who had been identified by the disgruntled employees as being friendly to Mr. Hammell.

Prior to his discharge, Mr. Hammell had received no warnings or counselings from the employer and had been urged to uphold company policies in his position of production group leader. A

number of individuals who had complained about the claimant had been given warnings or disciplinary actions by Mr. Hammell for violation of company policy.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly

be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In this case, the employer has relied primarily on hearsay evidence in support of its position that Mr. Hammell was discharged under disqualifying conditions. In contrast, the claimant participated personally and provided firsthand, sworn testimony denying the employer's allegations and reasonably explaining the allegations made by disgruntled employees about his demeanor and/or performance.

Based upon the totality of the evidence in the record, the administrative law judge concludes that the employer has not sustained its burden of proof in showing intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated March 28, 2011, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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