

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHON H RAI
Claimant

APPEAL NO. 08A-UI-03790-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VOLT TECHNICAL RESOURCES
Employer

OC: 03/09/08 R: 04
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Volt Technical Resources (Volt) filed an appeal from a representative's decision dated April 7, 2008, reference 01, which held that no disqualification would be imposed regarding Jonathon Rai's separation from employment. After due notice was issued, a hearing was held by telephone on May 14, 2008. Mr. Rai participated personally and was represented by Steven Drahozal, Attorney at Law. The employer participated by Elena Winter, Program Coordinator.

ISSUE:

At issue in this matter is whether Mr. Rai was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Rai was employed by Volt from October 16, 2006 until March 10, 2008. He was employed full time as a parts catalog author for John Deere. On the afternoon of March 7, 2008, the employer received a call from Mr. Rai's attorney indicating Mr. Rai would not be at work that day and that he did not know when he would be able to return. He was absent because he had been arrested the evening prior. Mr. Rai had his full 40 hours in for the week prior to March 7.

The employer decided on March 7 that Mr. Rai would be discharged. The decision was based on his unplanned absence of March 7 and performance issues that had been discussed with him previously. The employer met with Mr. Rai on February 18, 2008 concerning errors in the performance of his job. He was provided written notice of the employer's expectations regarding his future performance. His last performance evaluation was in October of 2007 and he was rated at least at a satisfactory level in all areas at that time. No further performance issues were addressed with Mr. Rai after the February 18 meeting. The only other disciplinary action against Mr. Rai was on November 20, 2007 when he received a written warning for sleeping on the job. He had not been disciplined because of his attendance.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Before a disqualification may be imposed, the evidence must establish that the discharge was predicated on a current act that constituted misconduct within the meaning of the law. See 871 IAC 24.32(8). Although Mr. Rai was not discharged due to his attendance, the decision was prompted by his absence of March 7, 2008.

The employer acknowledged that Mr. Rai was not required to work on March 7 if he already had his 40 hours in for the week. The employer did not refute his testimony that he did, in fact, have 40 hours in before March 7. Although he had planned to work that day, he was not required to. Moreover, he had not been warned that his continued employment was in jeopardy as a result of his attendance. Inasmuch as Mr. Rai was not required to work on March 7, his absence on that date was not an act of misconduct.

The next most prior disciplinary action was on February 18, 2008 when Mr. Rai was warned about errors in the performance of his job. The employer did not cite any performance issues that arose after the warning of February 18. The employer was unable to state whether his performance improved after the warning. In short, the employer failed to establish any intervening performance issues between the date of the warning and the date of discharge. Conduct that occurred on February 18 would not represent a current act in relation to the discharge that occurred on March 10. Nor was it a current act in relation to March 7, the date on which the decision to discharge was made.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to establish a current act of misconduct as that term is defined by law. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated April 7, 2008, reference 01, is hereby affirmed. Mr. Rai was discharged by Volt but a current act of misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs