

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW J FAULKNER
Claimant

APPEAL NO. 06A-UI-11510-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC
Employer

OC: 10/29/06 R: 03
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Beef Products (employer) appealed a representative's November 27, 2006 decision (reference 01) that concluded Andrew Faulkner (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 held on December 18, 2006. The claimant did not provide a telephone number where he could be reached and, therefore, did not participate. The employer participated by Rick Wood, Human Resources Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

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 hired on October 3, 2006 as a full-time maintenance person. On September 18, 2006, he signed an application certifying that his answers were correct. One question asked if he had ever been charged with a crime. The claimant answered "no". Later the employer discovered the claimant had been charged with burglary in the second degree on June 11, 1999. The claimant was not convicted of the crime.

The employer terminated the claimant on October 31, 2006, for falsifying his application for hire. The employer testified that the claimant would probably have been hired if it had known about the charges. The employer terminated the claimant because they thought he might lie about things or steal items in the future.

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 charge. However, there is no evidence the claimant was involved in illegal activities seven years ago.. While understanding the concerns of the employer, the judge does not believe it has established the falsification of the application could have exposed it or its workers to harm or liability sufficient to warrant a disqualification of unemployment benefits.

DECISION:

The representative's November 27, 1006 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw