

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLIE C STROUD**  
Claimant

**APPEAL NO. 08A-UI-10544-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COLORFX INC**  
Employer

**OC: 09/07/08 R: 02**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Charlie Stroud, filed an appeal from a decision dated November 3, 2008, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on November 25, 2008. The claimant participated on his own behalf. The employer, Colorfx, participated by Human Resources Manager Eileen Cron.

**ISSUE:**

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

**FINDINGS OF FACT:**

Charlie Stroud was employed by Colorfx from June 23, 2008 until September 10, 2008 as a full-time laborer working 3:30 p.m. until midnight. On September 8, 2008, the claimant and acting supervisor Steve Baint discussed whether or not the claimant would be allowed to operate one of the machines instead of just loading it. He loaded it for a few hours and when he asked if he could operate it, Mr. Baint did not allow it. The claimant then asked if he could go home early as it was a slow night and he also said he would not be in the next day. He said he wanted to explore other employment opportunities since things were not going the way he expected at Colorfx.

Mr. Baint granted him permission to leave early and be gone the next day. Mr. Stroud did call in the next day and spoke with the supervisor on the earlier shift and again reported he would not be in because he was looking into other jobs. When he returned to work on September 10, 2008, he spoke with his regular supervisor Dan Jones. The claimant had some complaints about the jobs he was being assigned to do, comments from other co-workers and wanted to know when he could expect raises. Mr. Jones said he could not do anything about Mr. Stroud's concerns and discharged him.

## REASONING AND CONCLUSIONS OF LAW:

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 had alleged the claimant was in a confrontation with Mr. Baint on the night of September 8, 2008, but did not present any first-hand, eyewitness testimony about the event. The claimant had denied any confrontation with Mr. Baint or that he did not have permission to leave early and be gone the next day. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). 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. The claimant is allowed unemployment insurance benefits.

**DECISION:**

The representative's decision of November 3, 2008, reference 03, is reversed. Charlie Stroud is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs