

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZACHARY G FAIRHURST
Claimant

APPEAL NO. 07A-UI-03753-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE PLATING LC
Employer

**OC: 03/11/07 R: 03
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Zachary Fairhurst, filed an appeal from a decision dated April 5, 2007, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 26, 2007. The claimant participated on his own behalf. The employer, Riverside Plating, participated by Vice President Jay Shultz.

ISSUE:

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

FINDINGS OF FACT:

Zachary Fairhurst was employed by Riverside Plating from February 10 until March 12, 2007, as a full-time laborer. On March 8, 2007, the claimant and Vice President Jay Shultz had an acrimonious confrontation about the claimant's poor attendance, as he had been frequently tardy to work in spite of the fact he lived only two blocks away. He worked for a few more hours that morning and then he was told he was laid off for lack of work and that Mr. Shultz would call him when he was needed.

The next morning he came to the plant at 8:30 a.m. to ask if there was work for him, even though the shift started at 7:00 a.m. He was told the employer would call him when he was needed. On Monday, March 12, 2007, the supervisor contacted Mr. Shultz at home and said Mr. Fairhurst had come to work, punched in, and refused to leave until he had talked to Mr. Shultz or the other co-owner, ostensibly to apologize for his conduct the week before.

The sheriff's department had already been called that morning because of a break in the night before and Mr. Fairhurst was arrested for trespassing. He was investigated further regarding the break in but nothing linked him to that event. The sheriff's deputy returned him to Riverside Plating and suggested to Mr. Shultz that if he wanted to discharge the claimant he should do so while the deputy was present. At that point the employer told the claimant he was fired.

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 claimant had initially been laid off for lack of work and, apparently, as a way to defuse some of the bad feelings between himself and the vice president. However, he continued to appear at the plant even though he had been told to wait to hear from the employer. Mr. Fairhurst maintained his phone did not work and that was why he came back on March 9, 2007, to see if he was needed, but that did not explain why he showed up 90 minutes after the start of the shift. It also did not explain why he punched in for work on March 12, 2007, if he was only there to ask if work was available to him and to apologize.

The claimant's conduct was disruptive, contrary to clear instructions by the employer, and hostile when he refused to leave when ordered to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of April 5, 2007, reference 03, is affirmed. Zachary Fairhurst is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw