

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDSON J HENDERSON

Claimant

APPEAL NO. 17A-UI-06881-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASPLUNDH TREE EXPERT COMPANY

Employer

OC: 06/11/17

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Asplundh Tree Expert Company (employer) appealed a representative's June 29, 2017, decision (reference 01) that concluded Edson Henderson (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 25, 2017. The claimant participated personally. The employer participated by Robert Benda, Regional Supervisor, and Louis Linxwiler, General Foreman. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 13, 2015, as a full-time fore person. The claimant signed for receipt of the employer's handbook on April 7, 2015. The company's object is to provide a violence free workplace. The handbook defines violence as a behavior which constitutes threats to company property or at a company work location. The employer did not issue the claimant any warnings during the claimant's employment.

On June 5, 2017, the claimant did not feel well at work. The workers gathered around for a safety briefing and the claimant expressed his feelings. He said that he felt anxious, angry and upset and did not feel he should be flying around in a bucket that day. His co-workers asked him what was wrong. They sat together and counseled him. The claimant talked about having thoughts of hurting himself and others. He thought of touching a live wire or a chainsaw. He thought about setting a fire. His co-workers encouraged him to call his union representative. The claimant left work, talked to his union representative, and went to the hospital. The claimant was hospitalized from June 5 to 8, 2017. His doctor diagnosed him with a mental health issue and his actions on June 5, 2017, were symptoms of his medical condition. This is the first time this had happened to the claimant. He was released to return to work on June 22, 2017.

While the claimant was in the hospital, the employer investigated and took statements from two employees. Two employees gave statements indicating the claimant made statements about harming himself and others. After he stopped working and started having a conversation with his union representative, the claimant talked about hurting management and lighting trucks on fire. Without talking to the claimant, the employer decided to terminate him. On June 12, 2017, the employer terminated the claimant.

The claimant filed for unemployment insurance benefits with an effective date of June 11, 2017. The employer did not participate in the fact finding interview on June 28, 2017.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to

warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The claimant appeared for work on June 5, 2017, sick. He voiced his symptoms to his co-workers and they helped him. His co-workers suggested he contact his union representative. The claimant had private conversations with his union representative and left for the hospital. The employer terminated the claimant for exhibiting or voicing the symptoms of his illness. The symptoms of an illness are not deliberate acts. The claimant had no intention of becoming sick and, therefore, his behavior cannot be considered misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative’s June 29, 2017, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs