

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANA L PIATT
Claimant

JENSON ELECTRIC LLC
Employer

APPEAL 17A-UI-04690-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/09/17
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the April 28, 2017, (reference 04) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on May 22, 2017. Claimant did not respond to the hearing notice instruction and did not participate. Employer participated through company president Michael Jenson. Employer's Exhibit 1 was received.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time electrician/helper through February 24, 2017. On that date Jenson was on site and caught him taking an extended hour-long lunch and reporting a half hour lunch. Jenson told claimant he would be moved to part-time hours because of his history of unproductivity. Claimant lied to Jenson about the long lunch and cursed at him so Jenson discharged him. Jenson had given claimant verbal or text message warnings for leaving the worksite without permission on October 18, 2016; arguing with Jenson on November 17, 2016; lied about incorrectly filling out a time sheet on January 20, 2017; lied about damaging concrete finish and threatened to lie to Jenson about coworkers on January 20, 2017; and about a no-call/no-show on January 31, 2017. (Employer's Exhibit 1)

Claimant filed weekly continued claims for the four weeks ending May 6, 2017, but was not paid unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

Causes for disqualification.

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.

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 is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant lied and was verbally abusive to Jensen after having been warned. This is disqualifying misconduct.

DECISION:

The April 28, 2017, (reference 04) unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Since no benefits were paid for weeks claimed, no overpayment is established.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs