

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS LANGFORD
Claimant

APPEAL NO. 08A-UI-05719-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC
Employer

OC: 05/18/08 R: 01
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Electrolux Home Products, Inc. (employer) appealed an unemployment insurance decision dated June 10, 2008, reference 01, which held that Thomas Langford (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 8, 2008. The claimant participated in the hearing. The employer participated through Theresa McLaughlin, Human Resources Generalist. Employer's Exhibits One through Five were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

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 full-time as a general laborer on September 9, 1985 and worked in shipping and receiving on May 16, 2008 when he was discharged. He was suspended on May 9, 2008 after a verbal altercation with a co-worker on May 7, 2008. The claimant was subsequently discharged for violation of the employer's workplace violence policy. The altercation resulted from Robert Stofer "fucking" with the claimant by telling him he could not set a box where he had set it. Mr. Stofer reported he was only "fucking with you" and the claimant responded by stating, "I'm tired of people fucking with me, go fuck yourself." Mr. Stofer then told the claimant to fuck himself and the claimant drove off on the forklift after that. Many other employees heard the altercation and all witnesses agree there was no physical contact, no verbal threats and it ended shortly after it started. Both parties were in violation of the work policy prohibiting using abusive language towards each other but violation of this policy is not a terminable offense.

The employer offered evidence that the claimant called his supervisors and left a voice mail message on May 8, 2008 saying, "Ya, this is Tom Langford. I just wanted you to call me back concerning an incident last night with Robert Stofer. Ah, you need to call me back because if

that happens again I'm gonna, somebody's going to get hurt." During a subsequent phone call, the claimant made statements "to the effect of wanting to cause bodily harm to Robert." His supervisors advised him that if he carried through with that sort of action, it would result in disciplinary action up to and including termination. The claimant was extremely frustrated with the situation and with Mr. Stofer's unnecessary harassment. The second shift supervisor reported that, "Bob (*Stofer*) can be relentless in this type of harassment." He went on to add, "Bob seems to take great delight in getting Tom upset and watching him fume – sometimes for hours." The claimant was trying to obtain some assistance from his supervisors in dealing with this co-employee but his request for help was used against him in that it was perceived as a threat. The claimant denied making a definitive threat and was simply trying to explain what could happen if this situation was not rectified. His explanation is found credible because his confrontation with Mr. Stofer on May 7, 2008 did not become physical when it very well could have. The second shift supervisor concluded, "In my opinion Bob is 100% responsible for this situation occurring at all.....Bob is a big mouth and a smart ass.....definitely not a team player." When viewing the situation as a whole, it appears the claimant used great restraint in not physically attacking Mr. Stofer, he attempted to get help to eliminate future problems and he was a long-term employee. When contrasting that to Mr. Stofer's reputation as a trouble-maker, the administrative law judge does not find the claimant's conduct to be disqualifying. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was discharged for allegedly violating the workplace violence policy. He never made any direct threats to his co-worker and he took appropriate action in trying to get management to intervene before something could happen. The employer could have potential trouble with an employee who apparently enjoys tormenting others and the claimant was trying to make this point. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated June 10, 2008, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css