

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JON G MORRIS**  
Claimant

**APPEAL NO. 07A-UI-08656-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JENSEN BUILDERS LTD**  
Employer

**OC: 11/26/06 R: 01  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated September 4, 2007, reference 08, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 25, 2007. Claimant participated personally. Employer participated by Mick McBride, Human Resources. Exhibit One was admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on July 24, 2007.

Claimant was discharged on July 25, 2007 by employer because claimant left work early on July 24, 2007. Claimant was acting sick and somewhat suspicious on July 24, 2007. Claimant was told to go home by the supervisor. Employer wanted to give claimant a drug test for suspicious behavior but did not catch claimant before he left. Claimant left work with permission and at the direction of his supervisor. Claimant came to work on July 25, 2007 and was promptly told that he had been discharged. Claimant was then offered the chance to prove he was drug free and get his job back by taking a drug test.

**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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning walking off the job. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant left work with permission of his supervisor. Claimant did not walk off the job. Claimant's in-person and sworn testimony is more credible than the hearsay offered by employer on walking off the job. As such, claimant's version is found correct. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated September 4, 2007, reference 08, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

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