

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SCOTT C WILLIAMS**  
Claimant

**MIDWEST BASEMENT SYSTEMS INC**  
Employer

**APPEAL 15A-UI-02780-KC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/01/15**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 23, 2015, (reference 03) unemployment insurance decision that denied benefits based upon conduct not in the best interests of the employer. The parties were properly notified about the hearing. A telephone hearing was held on April 7, 2015. The claimant participated. The employer participated through Jonathan Bishop. Exhibits 1 through 6 and Exhibits A through Q were received into evidence.

**ISSUE:**

Was the claimant discharged for work-related, disqualifying misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began full-time work with the employer as a block crew foreman on May 5, 2014. He was separated from employment on January 26, 2015, when his employment was terminated.

The claimant signed a non-compete document with Midwest Basement Systems on April 14, 2014. (Exhibit 6) He began his employment on May 5, 2014. The claimant did not receive a company handbook. (Exhibit A)

On completion of each basement wall replacement installation, the claimant received a percentage of the total compensation the employer received for the project. He averaged approximately \$38 - \$40 per hour. On some projects he received additional compensation. There were disputes about compensation and timeliness of pay between the employer and the claimant.

In addition, the claimant and the employer did not agree about who would provide the specialized tools to perform the work or uniforms. The claimant thought the employer would provide the tools but when that did not happen, he submitted a list of needed items. (Exhibits D, E) He then provided some of the tools and equipment, such as a trailer that he owned, for use on the employer's projects. In July 2014, he had T-shirts created with the phrase "basement wall replacement crew." (Exhibit I) The items were billed and shipped to the claimant's home

address and his contact information was his personal e-mail account. (Exhibit H) He did not consult the employer about the clothing but gave the T-shirts to the employer's staff to wear while working on the employer's projects. Other company employees had received uniforms supplied by the employer.

The claimant bought a truck in October 2014 that he hoped the employer might either buy or rent from him for the employer's work projects. (Exhibits A, J., K) He did not consult the employer before he bought the truck. The claimant had signage put on the truck "basement wall replacement crew" with his personal cell phone number. (Exhibit L) There was space above the signage for additional lettering. (Exhibit K) He used the truck to make calls on the employer's potential customers. He did not use the employer-provided cell phone because it was not a smart phone. (Exhibit A, pg. 2)

The claimant had business cards printed when the employer did not respond to his request for cards. (Exhibit L) The card listed the claimant's personal cell-phone as the contact information on the card that he provided to prospective customers of Midwest Basement Systems, however the employer's business name was not identified on the business card. The employer's "customer feedback form" contains a question asking whether the foreman gave the customer a business card. (Exhibit M) The claimant's business cards, which contained no reference to Midwest Basement Systems, were found in one of the employer's trucks. (Exhibits 1 - 2)

The employer and claimant disagreed about compensation for work performed in December 2014. The claimant worked full-time until December 23, 2104 when he requested a raise before he would continue working. The claimant and his crew, who were also employees of Midwest Basement Systems, estimated it would take one more day to finish a particular project before the weather changed. The owner Bill Heady was out of town and the claimant was advised by another member of management not to return to work until January 5, 2015, when the owner returned. The claimant and two co-workers collected their tools and left. (Exhibits 1, A) The claimant continued to work for the employer and completed projects through January 22, 2015. At that time, the claimant saw that no further work was scheduled until March 2, 2015. (Exhibit A, pg. 4)

On January 2, 2015, the claimant filed articles of incorporation for "Basement Replacement Experts." He also reserved rights to multiple website domains for his business on January 6, 2015. (Exhibit A, pg. 4) The website for "Basement Replacement Experts, Inc., basement and foundation repair professionals serving Des Moines and all of Iowa" was copyrighted in January 2015. The contact number is the claimant's personal cell number. (Exhibits 3-4) The claimant was still employed with Midwest Basement Systems at that time.

The employer learned of the claimant's conduct regarding promoting his own business shortly before the employer terminated the claimant's employment. No warning was given. The claimant was already aware of his responsibility not to compete with the employer, particularly while still in Midwest Basement Systems' employ, based on the agreement he signed before he began working for the employer.

#### **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 § 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.

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).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986)

While the employer/owner did not appear at the hearing and provide sworn testimony or submit to cross-examination, the combination of owner's written statement, Bishop's testimony, and the employer's documentary evidence, when compared to the claimant's recollection of events, establish the employer's evidence as credible. In addition, the claimant's own testimony and documentation demonstrate that he did not conduct himself in the best interest of his employer. Based on the claimant's conduct, no warning was required before the employer terminated employment.

An employee owes a duty of loyalty to an employer, particularly not to attempt to secure business from the employer for his own benefit, based on confusing or deceptive communications. The claimant's conduct in providing business cards, truck signage, a website

advertising his competing business, all of which identified his personal cell phone while reportedly attempting to secure more work for the employer indicates that he was acting in a way that was not in the best interest of his employer. Although the claimant continued to perform work for the employer during the period that he was advertising his own competitive endeavors, his conduct was contrary to the best interest of the employer. Benefits are denied.

**DECISION:**

The February 23, 2015, (reference 03) unemployment insurance decision is affirmed. 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.

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Kristin A. Collinson  
Administrative Law Judge

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Decision Dated and Mailed

kac/pjs