

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHAN C WOOD
Claimant

APPEAL NO. 11A-UI-11808-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRULL CONSTRUCTION COMPANY INC
Employer

OC:07/24/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated August 30, 2011, reference 04, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 29, 2011. Claimant participated. The claimant was represented by Mary Hamilton, attorney at law. Employer participated by Alan Krull, part owner. The record consists of the testimony of Alan Krull and the testimony of Jonathan Wood.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a general contractor. The claimant was hired on March 29, 2011, as a general laborer. The claimant's last day of work was July 28, 2011. He was terminated on July 29, 2011, prior to the start of the shift.

The employer terminated the claimant primarily because the claimant's attitude was boastful and he did not fit in well with the rest of the crew. Alan Krull, one of the part owners, also did an informal background check and was concerned about what he found. The claimant also had a key in his possession that belonged to a business. No one was supposed to have that key except the foreman and Mr. Krull.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

There is insufficient evidence in this record to establish misconduct. Alan Krull, the part owner, was most reluctant to disclose the details on why he chose to terminate the claimant. He alluded to things he found out when he did an informal background check and talked with a former employer. He finally testified that he terminated the claimant because he was not fitting in well with the rest of the crew and it was time to part ways. The employer made a business decision to terminate the claimant and may have had good business reasons for doing so.

However, absent specific evidence of misconduct, the administrative law judge cannot find misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated August 30, 2011, reference 04, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs