

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GORDON W REEDER
Claimant

APPEAL NO. 10A-UI-08282-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRACTICAL FARMERS OF IOWA
Employer

OC: 03/14/10
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Practical Farmers of Iowa, filed an appeal from a decision dated June 4, 2010, reference 01. The decision allowed benefits to the claimant, Gordon Reeder. After due notice was issued, a hearing was held by telephone conference call on August 9, 2010. The claimant participated by Katy Reeder. The employer participated by Communications Director Sally Worley.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Gordon Reeder was employed by Practical Farmers from September 2008 until March 10, 2010 as a part-time communication assistant. He was given a verbal warning by Executive Director Teresa Opheim on November 18, 2009, regarding an incident with Communication Director Sally Worley the previous day. He had been argumentative and uncooperative when he was discussing his work schedule with her.

The claimant had been temporarily put on full-time status to prepare for a conference. When he was transferred back to his regular part-time status after the conference, he became very hostile as a result. He blamed Ms. Worley for the change in his status but the full-time work was never meant to be anything but temporary. To avoid conflict, Ms. Opheim became his supervisor. He felt he was never given a good reason for the transfer.

On March 8, 2010, Ms. Opheim told the claimant Ms. Worley temporarily would be his supervisor while she was on vacation. On March 9, 2010, Ms. Worley asked him, via e-mail, for his work report, which is a statement of what the work is planned for that week. He gave an incomplete response and when she e-mailed again asking for more detail, he declined and indicated it was because she had not discussed with him two months earlier why she had declined to remain as his supervisor.

Ms. Worley discussed this with Ms. Opheim and they set up a meeting with Mr. Reeder for March 10, 2010. Prior to that meeting three employees reported the claimant had been complaining volubly about Ms. Opheim and Ms. Worley. This was discussed with him at the meeting and he said he was justified in doing this because management had been “antagonistic” to him. He was told whatever his concerns were he created an “unhealthy” work environment by involving other employees in his disputes and making such comments.

After that he discussed three pages of notes he had made about his general dissatisfaction with the employer, becoming angry and aggressive. The employer did not get involved in the discussion with him on his complaints because he was so belligerent. At the end of the meeting Ms. Opheim told him he was discharged for “fighting” with Ms. Worley and creating the “unhealthy” work environment by involving co-workers in his disputes.

Gordon Reeder has received unemployment benefits since filing a claim with an effective date of March 14, 2010.

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.

The claimant appeared to have many issues with his supervisors. Instead of dealing with them constructively he became hostile and insubordinate. He deliberately refused to grant Ms. Worley's request for more detail of his weekly work plan, blaming her for his refusal

because she had not complied with his demand for an explanation of her transferring him to another supervisor. There is no evidence he made any appointment with Ms. Opheim to discuss the matter.

Mr. Reeder's witness maintained it was "normal" for employees to involve their co-workers in their disputes with supervisors and he was only asking for "suggestions" on how to handle his grievances. The administrative law judge does not find this assertion to be credible because Mr. Reeder's co-workers apparently found his conduct egregious enough to complain to the supervisors about it. He created a hostile, "unhealthy" work environment by his conduct.

The record establishes the claimant was insubordinate, argumentative, hostile and uncooperative. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of June 4, 2010, reference 01, is reversed. Gordon Reeder is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css