

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHAN A CLIFTON
Claimant

APPEAL NO. 13A-UI-03953-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUBALL ELECTRIC INC
Employer

OC: 03/10/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jonathan Clifton (claimant) appealed a representative's March 27, 2013 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Duball Electric (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for May 13, 2013, in Cedar Rapids, Iowa. The claimant participated personally and through former co-workers, James Fisher, and Patrick Kos,. The employer was represented by Mark Seidl, Attorney at Law, and participated by Jerry Duball, President; Tamara Winn, Vice President/Office Manager; and Chad Gardner, Employer. The employer offered and Exhibits One, Two, and Three were received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 in January 2010, as a full-time electrician. The claimant signed for receipt of the employer's handbook. The employer talked to the claimant after the claimant asked the office manager to do something and she did not remember the request. The employer talked to the claimant and the office manager about getting along as a family.

On March 7, 2013, the claimant asked the office manager about the whereabouts for a part. The office manager did not understand what the claimant was asking. While asking the claimant had a phone to his ear, a box in his hand, and papers under his arm. The claimant was frustrated by the office manager's disrespectful attitude toward his questions. When he switched the phone from one ear to the other the box dropped. The office manager turned around and walked away from the claimant. A few seconds after the office manager was gone, the claimant dropped his papers on the floor at his feet.

The office manager reported to the owner that she was afraid of the claimant and felt attacked. She said the claimant blocked her path and stepped toward her. The owner watched a video of the exchange without audio. The owner terminated the claimant on March 7, 2013, without asking the claimant for his side of the story.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. After viewing the video of the exchange between the claimant and office manager, the video does not support the office manager's testimony. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 27, 2013 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css