

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT W WEST
Claimant

APPEAL NO. 15A-UI-10661-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS MANUFACTURING CO
Employer

OC: 07/05/15
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Robert West filed a timely appeal from a representative's decision dated September 14, 2015, reference 01, which denied unemployment insurance benefits finding that the claimant was discharged from work on August 24, 2015 for insubordination in connection with his work. After due notice, a telephone hearing was held on October 7, 2015. Claimant participated. The employer participated by Mr. Jerry Sander, Hearing Representative, and witness, Ms. Trisha Taylor, Supervisor.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Robert West was employed by Sears Manufacturing Company from August 21, 2013 until August 24, 2015 when he was discharged from employment. Mr. West was employed as a full-time receiving inspector and was paid by the hour.

Mr. West was discharged from his employment with Sears Manufacturing Company based upon his unwillingness to follow management directives about filling out production logs each shift and the statements that Mr. West made to management personnel during a meeting about the matter.

Mr. West had been instructed to complete logs during each of his work shifts because the supervisor who was responsible for the work that Mr. West performed, worked on a different work shift and needed verification of the duties that Mr. West was performing. Mr. West believed that the logs were unneeded and discontinued completing the logs a short time later. Although the supervisor sent West an e:mail instructing him to complete the logs, Mr. West was unwilling to complete them with the detail that was needed by management.

In an effort to save Mr. West's employment with the company, Mr. West was called to a meeting about the matter one week before his termination from employment. The supervisor, Ms. Taylor, and the claimant's union representative were at the meeting with the claimant. Although the employer renewed their request that Mr. West complete the logs as instructed, Mr. West referred to the request as being "asinine" and stated that he did not think the logs were needed. At the conclusion of the meeting, Mr. West anticipated that he might be discharged from employment because of the language he had used towards company management and the statements that he had made.

When Mr. West returned from a pre-scheduled vacation period on August 24, 2015, he was discharged by the employer for his refusal to follow the directives that the employer reasonably considered to be insubordination by the claimant.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

An employer has the right to expect decency and civility from its employees and an employee's use of offensive language in a confrontational, disrespectful and name-calling context may be recognized as misconduct disqualifying the employee from the receipt of unemployment insurance benefits. See Henecke v. Iowa Dep't of Job Serv., 533 N.W.2d 573 (Iowa Ct. App. 1995). In this matter, Mr. West repeatedly refused to follow a reasonable and work-related directive that had been given to him by company management and was openly defiant during a meeting held by the company to resolve Mr. West's unwillingness to follow a reasonable and work-related directive. The claimant's refusal to follow the directive and the statements that he made during the meeting were insubordinate and intended to undermine his supervisor's authority. The claimant knew or should have known that continued failure to follow the work directives and the language that he used during the meeting could lead to his termination from employment. When Mr. West continued to be unwilling to follow the directive to keep a log of work activities and was openly defiant during a meeting about the issue, he was discharged from employment. For these reasons the administrative law judge finds that the employer has sustained its burden of proof in establishing the claimant was discharged for misconduct in connection with his work. Accordingly, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated September 14, 2015, reference 01, is affirmed. Claimant is disqualified from the receipt of unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs