

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW R STEPHENS
Claimant

APPEAL NO: 08A-UI-06957-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WRIGHT TREE SERVICE INC
Employer

OC: 06/22/08 R: 01
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Matthew R. Stephens (claimant) appealed a representative's July 21, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Wright Tree Service, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 13, 2008. The claimant participated in the hearing. Deb Shelburne of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Jerry Black and Ray Flick. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 16, 2004. Since approximately January 2005 he worked full time as a foreman of a Council Bluffs, Iowa based crew trimming trees from near power lines. His last day of work was June 25, 2008. The employer discharged him on June 26, 2008. The reason for the discharge was repeated horseplay after warning.

On June 19, 2008 the employer received a complaint from a trimmer on the claimant's crew that the claimant had harassed him and subjected him to horseplay. The trimmer was removed from working on the claimant's crew pending investigation, and on June 24 the employer interviewed the claimant and other employees. On June 19 the claimant had whistled in the trimmer's ear; his explanation was that he had done so because the trimmer was sleeping and he was seeking to awaken the trimmer. On that day he also discovered that someone had put some gravel into a can of pop he was drinking. He believed the trimmer was responsible, and he tossed the remainder of the can of pop and gravel toward and on the trimmer. The claimant had been having some prior difficulties in communicating with the trimmer due to a language issue, but had not indicated any prior horseplay from the trimmer or need to discipline the trimmer.

In October 2007 the claimant had been given a warning and three-day suspension for an incident involving horseplay for driving off and making a crew member walk part of the way from a work site and putting a crew member's gloves through the chipper. As a result of the claimant's conduct in June 2008 after that prior warning, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's conduct toward the trimmer after the prior warning shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's July 21, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving

unemployment insurance benefits as of June 25, 2008. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs