

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DWAYNE J KRUMVIEDE
Claimant

APPEAL NO. 07A-UI-10514-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPRINGVILLE READY MIX INC
Employer

**OC: 01/14/07 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Dwayne Krumviede (claimant) appealed a representative's October 29, 2007 decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he was placed on disciplinary suspension from work with Springville Ready Mix (employer) for violation of company rules. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 30, 2007. The claimant participated personally. The employer participated by Larry Wittenburg, President.

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 having considered all of the evidence in the record, finds that: The claimant was hired in June 2001, as a full-time truck driver. The employer had a policy that an employee could not receive holiday pay if he was not available for work the days before or after a holiday. Labor Day was September 3, 2007. The Saturday before the holiday, the claimant was originally unavailable for work but he later told the employer he was available. The employer responded that the claimant was lucky that he found someone to work his hours the Saturday before the holiday.

The claimant took vacation from September 13 through 15, 2007. On September 13, 2007, the claimant opened his paycheck and found the employer did not pay him holiday pay. The claimant telephoned two office workers about the mistake in his paycheck. Later, he talked to the president. They argued and the claimant hung up on the employer. Two days later, the employer telephoned the claimant and told him he could take the week off for hanging up on the employer.

On September 25, 2007, the claimant returned to work and the two again starting arguing about the holiday pay. The employer told the claimant he was fired outside the hearing of other office workers. When the claimant left the employer's office, the employer told the office workers the claimant was quitting.

On October 26, 2007, the employer offered the claimant work, but the claimant had previous plans. On October 29, 2007, the employer again offered the claimant work, but he was waiting to hear about another job. He did not contact the employer when the other job did not materialize.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not suspended for misconduct.

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). The employer issued the claimant a suspension for insubordination. Insubordination is not misconduct if the conduct is reasonable. Argumentative conduct is not misconduct if it is reasonable under the circumstances. In this case, the employer was refusing to pay the claimant wages that were due. The claimant's argument with the employer was reasonable. The employer has failed to provide sufficient evidence of misconduct at the hearing. Benefits are allowed.

DECISION:

The representative's October 29, 2007 decision (reference 03) 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/kjw