

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANH H LE
Claimant

APPEAL NO. 11A-UI-11498-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON STAFFING COMPANY LC
Employer

OC: 07/03/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated August 24, 2011, reference 02, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on September 26, 2011. Claimant participated. The employer participated by Ms. Mate Cloe.

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 all of the evidence in the record, the administrative law judge finds: Anh Le was employed by Jacobson Staffing Company LC most recently from December 22, 2009 until August 1, 2011 when he was discharged from employment. Mr. Le was assigned to work as a warehouse worker at the Titan Tire Company and was paid by the hour.

Mr. Le was discharged after he exceeded the permissible number of attendance infractions allowed by Jacobson Staffing Company and the client employer. Employees who are assigned to work at client employer locations are expected to adhere to the attendance requirements of the client company.

Under the attendance policy in effect employees are subject to termination if they exceed the permissible number of attendance infraction points allowed under the policy. Mr. Le was aware of the policy and had received four attendance warnings prior to being discharged.

The final incident that caused Mr. Le's termination took place on August 1, 2011. On that date the claimant had agreed to work overtime to replace a lead worker. After agreeing to work in place of the other employee, it was the employer's expectation that Mr. Le would work the four hours between his normal leaving time of 3:00 p.m. and 7:00 p.m. that night. After agreeing to

work the employer in effect considers the employee to be scheduled and failure to work the agreed upon extra time is considered to be an attendance infraction.

After reconsidering, Mr. Le decided not to work the extra hours that he had agreed to. The claimant had put in for pre-approved vacation time that week and had realized that the extra hours on August 1, 2011 might not be paid as overtime because he would not have worked an excess of 40 hours that week. When the claimant declined to work the four extra hours that he had agreed to, he was specifically informed by Ms. Cloe that his refusal would be considered to be an unauthorized attendance infraction and cause him to exceed the permissible number of attendance infractions allowed under company policy. Mr. Le, nevertheless, chose not to work the hours that he had agreed to and was subsequently discharged for exceeding the company's attendance policy.

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.

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 this matter. See Iowa Code § 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).

No aspect for the contract of employment is more basic than the right of the employer to expect employees will appear for work on the hour and day agreed upon. Recurrent failure to honor that obligation evinces a substantial disregard for the employer's interest and thus may justify a finding of misconduct in connection with the employment.

In the case at hand Mr. Le was aware of the client employer's attendance policy and had received four warnings for unsatisfactory attendance. Claimant received a final warning on June 23, 2011 and was aware that any additional attendance infractions in place before August 10, 2011 would cause termination from employment. On the day in question the claimant specifically agreed to work in place of another worker and the claimant's agreement to do so had caused the company to rely on the claimant working from 3:00 p.m. to 7:00 p.m. that evening. Mr. Le later chose not to honor that agreement to work because he realized he would not qualify for overtime pay. Although the claimant was specifically advised that his refusal to work as agreed would cause his termination, the claimant nonetheless chose not to work and was terminated. The claimant's willful refusal to work the agreed upon hours showed a disregard for the employer's interests and standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated August 24, 2011, reference 02, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant 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