

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALLEN D ABAD**  
Claimant

**APPEAL NO. 10A-UI-11785-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VALLEY WEST OIL COMPANY INC  
JC'S CORNER STORE**  
Employer

**OC: 07/04/10**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Allen Abad (claimant) appealed a representative's August 12, 2010 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with JC's Corner Store (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 September 27, 2010, in Des Moines, Iowa. The claimant participated personally. The claimant offered former co-workers, Seth Watts, Mike Watts, John Snyder, Phillip Abad, Megan Johnston, and Dennis Howard. The employer participated by Amy Ridgway, Corporate Secretary and Corporate Financial Officer, and Jim Staudenmaier, President. The claimant offered and Exhibits A and B were received into evidence. The employer offered and Exhibits One, Two, Three, and Four 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 having considered all of the evidence in the record, finds that: The claimant was hired on November 12, 2005, as a full-time service technician. The claimant signed for receipt of the employer's handbook on November 12, 2005. The employer is a family-owned business. The claimant was told to clock out at the end of his shift and he would be paid commission for any vehicle work he did beyond his shift. The claimant found it difficult to take varying instruction from the mother, father, sister, and brother.

The brother, Chad Staudenmaier, was especially difficult. He threatened the claimant with firing if he did not perform personal odd jobs and then would not pay the claimant an hourly wage. He was intoxicated at work and an ambulance took him away. He told employees one thing and told his family something else.

On June 30, 2010, Allen Abad and Seth Watts clocked out at the time the employer told them their shifts should end. A customer asked the two for an estimate to repair a vehicle. The two examined the vehicle and Mr. Abad prepared an estimate. The customer gave Mr. Abad tip money to buy beer. The three walked into the shop while Mr. Abad purchased beer. Mr. Watts walked back to the service bay and began cleaning. The customer and Mr. Abad went to the waiting area to discuss the estimate. Mr. Abad told the customer that he could take one or two of the beers but refused the beer himself. Mr. Abad and the customer smoked cigarettes outside with the door open. The customer left and Mr. Abad went to help Mr. Watts clean the bay. Mr. Abad did not drink any beer at work.

Chad Staudenmaier appeared at work yelling and cussing about Mr. Watts and Mr. Abad not building a fence at his friend's house the following day. Mr. Staudenmaier told the two he would close the shop down early so they could build the fence. He told them if they did not build the fence, he would fire them. Mr. Staudenmaier told the two to pull the trucks into the bay and close the doors. The two told him that they could not because they were still working. He took a picture of the beer the customer drank. He told his family that the two were drinking and smoking in the premises even though they did not. The employer terminated the claimant on July 2, 2010.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not discharged 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). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose to provide written statements. The statements do not carry as much weight as live testimony, because the testimony is under oath and the witness can be questioned. The employer did not provide firsthand testimony at the hearing and, therefore, did not provide sufficient eyewitness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible, because he was an eyewitnesses to the events for which he was terminated. The employer provided statements to support its case.

**DECISION:**

The representative's August 12, 2010 decision (reference 01) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/kjw