

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEE W BUTLER

Claimant

APPEAL NO. 11A-UI-04111-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

R & B FEEDS LLC

Employer

OC: 02/20/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated March 23, 2011, reference 01, that denied unemployment insurance benefits based upon his separation from R & B Feeds, LLC. After due notice, a telephone conference hearing was held on April 25, 2011. The claimant participated personally. The employer participated by Beth McDermott, Co-Owner and Rex McDermott, Co-Owner.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Lee Butler was employed by R & B Feeds LLC from June 8, 2009 until February 24, 2011 when he was discharged from employment. Mr. Butler worked as a full-time driver/mill worker and was paid by the hour. His immediate supervisor was Rex McDermott.

Me. Butler was discharged from his employment with R & b Feeds LLC on February 24, 2011 when he indicated that he would be attending a mandatory insurance meeting scheduled for the next day, Friday, February 25, 2011 and stated to Mr. McDermott in effect that the company had been lying to employees about insurance matters.

Because of the variable hours in Mr. Butler's truck driving duties, he at times had completed his workweek by working 40 hours by Thursday evening of some weeks. During the week in question, however, Mr. Butler had one hour remaining in his 40-hour workweek and the employer expected that the claimant would attend the mandatory meeting on the following workday. Employees had been required to attend the mandatory meeting the previous week so that the employer could explain changes in the insurance coverage. Based upon the claimant's unwillingness to attend the mandatory meeting and his statements, a decision was made to terminate Mr. Butler from his employment at that time.

It is the claimant's position that the company had previously reneged on promises that had been made regarding insurance. The claimant denies poking his employer in the chest while making the most recent statement but agrees THAT the preceding he had stated to his employer, "Things are going to change, if you are not a man of your word."

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record indicates that Mr. Butler was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

Because Mr. Butler was discharged the employer bears the burden of proof in this matter. See Iowa Code section 96.6-2. An employer has a right to expect decency and civility from its employees. An employee's use of offensive or insubordinate language in confrontational or disrespectful context may be recognized as misconduct disqualifying the employee from the receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). An isolated incident of offensive or insubordinate language can constitute misconduct and warrant disqualification from unemployment benefits if it serves to undermine a superior's authority. Deever v. Hawkeye Window Cleaning, Inc., 447 N.W.2d 418 (Iowa App. 1989).

Based upon the evidence in the record the administrative law judge concludes Mr. Butler was discharged for misconduct in connection with his employment when he refused to attend a mandatory meeting set for a time when the claimant had not yet completed his 40 hours of work for the week and because of the claimant's confrontational statements to his employer. Accordingly, a disqualification will enter.

DECISION:

The representative's decision dated March 23, 2011, reference 01, 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 claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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