

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK D ALBRECHT
Claimant

APPEAL NO. 12A-UI-09377-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTHWEST MFG INC
Employer

OC: 06/24/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Northwest Manufacturing, Inc. filed a timely appeal from a representative's decision dated July 25, 2012, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on August 28, 2012. Claimant participated. The employer participated by Mr. Daniel VanBeek, Company President.

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: Mark Albrecht was employed by Northwest Manufacturing, Inc. for approximately 26 years before being informed that his employment with the company was ending. Mr. Albrecht most recently worked as a part-time fabricator/painter and was paid by the hour.

On June 20, 2012, Mr. Albrecht was informed that his job with the company was ending because the company had hired a new painter who was able to perform the painting duties in a manner that was superior to Mr. Albrecht's performance. Mr. Albrecht was informed that he could continue to work until June 28 or that he could leave before then if he wanted to.

Mr. Albrecht reasonably concluded that he was being discharged from employment and reasonably believed that he had the option of being discharged at that time or waiting one additional week to be terminated from his 26-year job with the company. Mr. Albrecht informed the company that he elected to have June 21, 2012 as his last day of employment. The claimant's intention was to clear the way for the company to make progress if his work performance was unacceptable.

Leading up to the decision to terminate Mr. Albrecht the company had warned Mr. Albrecht on numerous occasions about poor quality painting. Although the claimant's work had been

unsatisfactory on numerous occasions, the employer did not believe that Mr. Albrecht was intentionally performing below his capabilities. The employer concluded that medical issues were affecting his ability to perform to the level of competency expected by the company. The parties agreed that his employment would end on June 21, 2012 and the claimant's employment ended that day.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant was discharged for intentional misconduct in connection with his work. It does not.

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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct 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).

In this matter the claimant was informed on June 20 that he was being discharged from employment and replaced by a new painter. The claimant was given the option of leaving employment at that time or continuing his employment until June 28, 2012. Mr. Albrecht elected to be discharged on June 21, 2012 based upon his perception that the employer wanted the claimant out of the way so that the new worker could perform his duties and the company could prosper. The employment relationship between the parties came to an end on June 21, 2012, the effective date of the discharge as agreed to by the parties.

The evidence in the record establishes that Mr. Albrecht's performance was not satisfactory but that the claimant's poor performance was not due to intentional, disqualifying misconduct. The employer's witness testified that he felt that Mr. Albrecht was performing his duties to the best of his ability but the claimant could not meet the employer's performance expectations.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for these reasons but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Mr. Albrecht may have been a sound decision from a management viewpoint, intentional, disqualifying misconduct on the part of the claimant has not been shown. The claimant performed his duties to the best of his ability and was separated when he could not meet the employer's expectations. The parties agreed that the claimant could end his employment on June 21, 2012 and the employment came to an end when the claimant was discharged that date per the agreement between the parties. Benefits are allowed, provided the claimant is otherwise eligible. The evidence in the record does not establish intentional, disqualifying misconduct.

DECISION:

The representative's decision dated July 25, 2012, reference 02, is affirmed as modified. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs