

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIO A RODRIGUEZ

Claimant

APPEAL NO: 15A-UI-07118-LDT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYER SOLUTIONS STAFFING GRP

Employer

OC: 05/10/15

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.7-2-a(2) – Charges Against Employer’s Account

STATEMENT OF THE CASE:

Julio A. Rodriguez (claimant) appealed a representative’s June 19, 2015 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Employer’s Solutions Staffing Group (employer). After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on August 18, 2015. The claimant participated in the hearing. Rob Hart appeared on the employer’s behalf and presented testimony from one other witness, Amner Martinez. Elias Beauchamp served as interpreter. During the hearing, Employer’s Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for work-connected misconduct? Is the employer’s account subject to charge?

OUTCOME:

Reversed. Benefits allowed. Employer’s account not subject to charge in the current benefit year.

FINDINGS OF FACT:

The claimant started working for the employer near the end of April 2015. He worked full time as an assembler on a first shift at the employer’s Des Moines, Iowa business client. His last day of work was May 15, 2015. The employer discharged him on that date. The reason asserted for the discharge was that the claimant had allegedly made a small cabinet as a personal home improvement project while he was at work.

The employer based its conclusion that the claimant had done this upon a second-hand statement from the business client’s supervisor. The claimant denied that he had had anything to do with the building of the “cabinet.” Rather, he testified that his girlfriend, who also had

worked on the assignment, had made the “cabinet” to hold work pieces, but that he had not assisted her.

The claimant established an unemployment insurance benefit year effective May 10, 2015.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant’s employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the assertion he had built a cabinet at work that was for a personal home improvement project. The employer relies exclusively on the second-hand account from the business client’s supervisor; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the supervisor might have been mistaken, whether he actually observed the entire time, whether he is credible, or whether the employer’s witness might have misinterpreted or misunderstood aspects of the supervisor’s report. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was responsible for the building of the “cabinet.” The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began January 1, 2014 and ended December 30, 2014. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's June 19, 2015 decision (reference 03) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css