

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-12904-HT
OC: 10/31/04 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer, Premier Graphics, filed an appeal from a decision dated November 23, 2004, reference 01. The decision allowed benefits to the claimant, Christopher Compo. After due notice was issued, a hearing was held by telephone conference call on December 28, 2004. The claimant participated on his own behalf. The employer participated by Human Resources Manager Linda Sutherland; General Manager Richard Doll; and Pre-Press Supervisor Sean Sutfin.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Christopher Compo was employed by Premier Graphics from November 14, 2001 until November 2, 2004. He was a full-time computer operator in the third shift pre-press department. Throughout the course of his employment, Mr. Compos received eight warnings regarding performance issues, ranging from sleeping on the job; being no-call/no-show to work; ignoring a work order from his supervisor; and being rude and disruptive to co-workers.

On November 2, 2004, Dan Phillips, from the press department, called General Manager Richard Doll at his home at 12:30 a.m. He said there had been an "issue" in the press department for approximately three hours and the presses were still down. Mr. Doll asked who was working in the pre-press department and was told it was Mr. Compo and a new employee, Dave Bierman. Mr. Compo got on the line and Mr. Doll asked him what the problem was. The claimant said he did not know because it "was not [his] job," and that the other computer operator had been dealing with it.

Mr. Compo was the senior operator and acting supervisor in the pre-press department on the third shift. It is of primary importance that the presses are kept running and all problems to be resolved as soon as possible. The policy is for the senior operator to take over if the other operator was unable to solve the problem. If Mr. Compo had not been able to deal with the issue, he was to have contacted Pre-Press Supervisor Sean Sutfin. He neither took over from Mr. Bierman nor did he contact Mr. Sutfin.

Mr. Doll told the claimant if there were ever another occasion where the presses had been down for three hours and he had not called a supervisor, he would be fired. The claimant said if Mr. Doll felt that way, to fire him right then, and the general manager did so.

Christopher Compo filed a claim for unemployment benefits with an effective date of October 31, 2004. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was aware of his responsibility as the senior pre-press operator on duty. However, he did not perform his duties as required, instead leaving the press problem to a new employee who lacked experience with the company, whatever his other qualifications may have been. Mr. Compo did not attempt to help resolve the issue by either joining in the work or contacting his supervisor to come in and deal with the problem. His attitude that it was "not [his] job" is not acceptable. As the supervisor on duty it was ultimately his job and his responsibility. The general manager was understandably annoyed at being awaked in the middle of the night to deal with a problem that the claimant was refusing to address. To exacerbate the situation, Mr. Compo's demand that he be discharged immediately was insubordinate. The claimant's conduct was a violation of the duties and responsibilities an employer has the right to expect from an employee and constitutes misconduct. He is disqualified.

DECISION:

The representative's decision of November 23, 2004, reference 01, is reversed. Christopher Compo is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/b