

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

KONGSINH N XAYYARATH
2058 E GRAND AVE
DES MOINES IA 50317

LINK PAINTING & DECORATING INC
6809 TIMEBERWOLF LN
DES MOINES IA 50320

GAIL KLEARMANN
LEGAL AIDE
1111 – 9TH ST STE 230
DES MOINES IA 50314

Appeal Number: 05A-UI-03386-DW
OC: 12/05/04 R: 02
Claimant: Respondent (1)

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:

Link Painting & Decorating, Inc. (Link) appealed a representative's March 28, 2005 decision (reference 01) that concluded Kongsinh N. Xayyarath (claimant) was qualified to receive unemployment insurance benefits, and Link's account could be charged for benefits paid to the claimant because the claimant's employment separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held in Des Moines, on April 26, 2005. The claimant participated in the hearing with Gail Klearmann, an attorney at law. Kenny Link, the president of Link, appeared at the hearing. 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.

ISSUE:

Do the reasons for the claimant's employment separation qualify him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for Link in 1999. The claimant painted for Link and until January 1, 2004, the claimant was considered an employee. As of January 1, 2004, Link considered the claimant a subcontractor. In November 2004, Link received a notice from the Federal government that the claimant was considered an employee and not an independent contractor or subcontractor. Link appealed this decision and received information that the claimant should sign a paper verifying that he willingly and knowingly understood he was performing services as a subcontractor.

Link asked the claimant to sign the above document in late November or early December 2004. The claimant decided he would not sign the document. The claimant did not agree with the content of the document Link asked him to sign. The claimant understood the employer would not have him do anymore painting until or unless the claimant signed the paper. Even though the employer had continuing work for someone to do, the claimant did not do any more painting after early December 2004.

The Department investigated the issue of whether the claimant is an independent contractor or an employee. The Department issued a decision on February 15, 2005, that the claimant was an employee. As of the date of this decision, the February 15, 2005 decision has not been reversed.

REASONING AND CONCLUSIONS OF LAW:

Since the February 15, 2005 decision has not been reversed as of the date of this decision, the claimant must be considered an employee until or unless the February 15, 2005 decision is reversed. (The administrative law judge realizes the employer may have appealed the February 15 decision, but until a hearing is held and the February 15 decision is reversed or is changed, the claimant is considered an employee.)

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The facts show the employer initiated the separation by asking the claimant to sign a document indicating he willingly and knowingly understood he was an independent contractor/subcontractor. The claimant declined to sign the paper in part because he did not agree with some of the terms stated in the document. The claimant reasonably believed the employer would not allow him to do anymore painting until he signed the document. When Link wanted the claimant to sign the document right away and called the claimant about signing the document supports the claimant's testimony that the employer would not allow him to work on any more painting projects until the claimant signed the paper Link had drafted. Based on the Federal representative's suggestion that Link have the claimant sign the document, Link's insistence that the claimant sign the document and the claimant's reasonable conclusion that Link did want him to work again until he signed Link's prepared statement. For unemployment insurance purposes, the employer initiated the end of the relationship and ultimately discharged the claimant in early December 2004.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts show that the reason for the claimant's dismissal does not amount to work-connected misconduct. Therefore, as of December 5, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 28, 2005 decision (reference 01) is affirmed. Link Painting & Decorating, Inc. ended the relationship with the claimant for reasons that do not constitute work-connected misconduct. As of December 5, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs