

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIC MADSEN**  
Claimant

**APPEAL NO. 12A-UI-00744-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EAST SIDE JERSEY DAIRY INC**  
Employer

**OC: 12/11/11  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Eric Madsen (claimant) appealed a representative's January 13, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with East Side Jersey Dairy (employer) for insubordination in connection with his work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 17, 2012. The claimant was represented by Dave Baker, Union Representative, and participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibit A was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 7, 2005, as a full-time delivery driver. The employer did not give the claimant a handbook or any warnings during his employment.

On December 6, 2011, the claimant made a delivery to a customer's store. The store smelled because milk was sitting out and leaking on the floor. In addition the claimant had to sweep the store before he could bring the delivery into the store. The claimant made a comment to the cashier because this was out of character for this particular customer. The cashier complained to the employer.

On December 8, 2011, the claimant was returning home after a long day. He was short on time to get to his child's Christmas program. The employer wanted to meet with the claimant regarding the complaint. The employer asked the claimant to enter an office with a number of people and sit down. The claimant declined to sit because he had been sitting all day. The employer was upset that the claimant would not sit and started yelling at him. Another person grabbed the claimant's arm and shoved him, trying to make the claimant sit down. The claimant was upset by the employer's behavior and left the meeting.

On December 9, 2011, the claimant met with the employer again and talked through what had happened on December 8, 2011. The claimant indicated that he did not feel well. After the claimant left the meeting he went to his physician. The physician removed the claimant from working through December 23, 2011. The employer received the physician's note. The employer terminated the claimant by letter on December 12, 2011.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's January 13, 2012 decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/pjs