

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRET J BAIN
Claimant

APPEAL NO. 10A-UI-10386-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DESIGN ENGINEERING AND
MANUFACTURING INC**
Employer

OC: 11/22/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated July 12, 2010, reference 01, which denied benefits based upon his separation from Design Engineering and Manufacturing, Inc. After due notice a telephone hearing was held on September 8, 2010. Claimant did participate. The employer participated by David Tedrow, General Manager.

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: Bret Bain was employed by Design Engineering and Manufacturing, Inc. from January 28, 2008 until June 15, 2010 when he was discharged from employment. Mr. Bain worked as a full-time production operator and was paid by the hour. His immediate supervisor was David Tedrow.

Mr. Bain was discharged on June 15, 2010 for disclosing confidential payroll information in violation of a known company rule on June 14, 2010. On that date Mr. Bain was dissatisfied following a meeting with the company's general manager, Mr. Tedrow. The company manager had informed Mr. Bain on June 14, that the company planned to discharge him as soon as they could find a replacement. Mr. Bain had taken time off a few days earlier to attend a job interview with a new perspective employer. The claimant had been instructed to report for work on Friday, June 11, 2010 but had failed to report that day and did not provide notification.

Following the meeting with the general manager on June 14, Mr. Bain was upset because the general manager was planning to discharge him when a replacement was found and upset because Mr. Bain believed the general manager had been abusive during the meeting. It appears that the general manager may have prefaced his statement of intent to discharge Mr. Bain when a replacement could be found by stating, "You are f....ing out of here."

After leaving the meeting on June 14, Mr. Bain verbalized his dissatisfaction to co-workers specifying the amount that he was being paid per hour and stating the he did not need to put up with the employer's conduct for that amount of pay per hour. The claimant then returned to his machine and began performing his duties. When other employees complained to management about Mr. Bain's conduct and statements, the company met with Mr. Bain and when he admitted to violating the company's confidentiality policy about pay rates, he was discharged from employment. Under established company policy pay rates are confidential and violation of the policy can result in termination. Mr. Bain was aware of the company policy.

It is the claimant's position that he believed that he was discharged at the time that Mr. Tedrow stated, "You are f....ing out of here" and that because he was already discharged any subsequent statements should not be used to disqualify him from receiving unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 evidence in the record establishes that Mr. Bain was not discharged during a meeting on June 14, 2010 with the company's general manager. The employer expressed the employer's intention to discharge Mr. Bain in the future when a replacement could be secured. Mr. Bain did not take this statement, "You are f....ing out of here" as a discharge statement as the claimant returned to his work area and continued to perform duties later that afternoon. The evidence establishes that Mr. Bain violated a known company policy which prohibited confidential pay information to be assimilated to other employees. Misconduct on the part of the claimant was willful and took place prior to his discharge from employment. It showed a disregard of the employer's interest and standards of behavior and thus was disqualifying under the provisions of the Employment Security Act.

DECISION:

The representative's decision dated July 12, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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