

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUG F HANTELMANN
Claimant

APPEAL NO. 10A-UI-02842-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

STEVES ACE HARDWARE
Employer

OC: 01/24/10
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated February 17, 2010, reference 01, which held the claimant eligible to receive unemployment insurance benefits based upon his separation from Steve's Ace Hardware. After due notice was issued, a hearing was held in Dubuque, Iowa, on July 20, 2010. The claimant participated personally. Participating as a witness for the claimant was his brother, Kevin Hantelmann, who also was employed part-time by the employer. The employer participated by Steve Selchert, company owner; Phillip Roth, general manager; and Jeff Weigman, sales associate. Employer's Exhibits One, Two, Three, and Four were received into evidence.

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 the evidence in the record, the administrative law judge finds: Doug Hantelmann was employed as a full-time sales associate for Steve's Ace Hardware from October 6, 2003, until his discharge on January 27, 2010. Mr. Hantelmann was paid by the hour. His immediate supervisor was Phillip Roth.

Mr. Hantelmann was discharged from his employment after a number of employees confirmed the allegation that Mr. Hantelmann was actively soliciting company employees and customers for a competitor who soon was to open a hardware store in the area. A head cashier assigned to work at one of the employer's two business locations complained to the company owner that the claimant was actively recruiting employees at that store to seek employment with the new hardware store whose opening had been announced. After meeting with the cashier who had made the complaint, the company owner and the general manager interviewed other workers at the location where Mr. Hantelmann was employed. The workers verified that Mr. Hantelmann had been, in effect, "recruiting" them both on the job and by personal telephone calls after working hours. One or more employees had instructed Mr. Hantelmann not to call them about the potential new employment. Mr. Weigman reported that on one occasion Mr. Hantelmann's

solicitations about the benefits of the new hardware store were so direct that both Mr. Weigman and the customer asked Mr. Hantelmann “if you’re trying to get fired?”

The company owner and the company’s general manager concluded that the allegations had been corroborated and believed that the claimant was intentionally acting contrary to the employer’s interests both on and off the clock.

On January 26, 2010, Mr. Hantelmann was called to the company offices. When the employer inquired about Mr. Hantelmann’s activities, Mr. Hantelmann responded, “I’ve had no raise in a couple years... the new store is a great opportunity.” Thereupon the claimant was discharged from employment.

It is Mr. Hantelmann’s position that the majority of company employees and patrons were aware of the new hardware store’s opening and the matter was the subject of conversation and speculation universally. Mr. Hantelmann denies recruiting employees or patrons for his employer’s competitor. It is the claimant’s belief that because he is a personal friend of the new store owner, that his remarks were misinterpreted by those involved.

At the time of hearing, Mr. Hantelmann is employed by the competitor of Steve’s Ace Hardware. The claimant maintains that he was required to seek new employment after being discharged without warning.

REASONING AND CONCLUSIONS OF LAW:

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

The employer has the burden of proof in this matter. Misconduct sufficient to warrant the discharge of an employee is not necessarily serious enough in all cases to warrant the denial of unemployment insurance benefits. The focus is on intentional and culpable acts by an employee that are contrary to the employer's reasonable business interests and the reasonable standards of behavior that an employer has a right to expect from employees under the provisions of the Iowa Employment Security Act.

Mr. Hantelmann was not discharged on the basis of a single allegation that he had actively solicited staff and/or customers from Steve's Ace Hardware to become employed or to do business with a new competitor. The initial allegation that this conduct had taken place was corroborated by statements to the employer by a number of employees who believed that the claimant's actions had gone beyond mere conversation and evolved into active solicitation on behalf of a competitor.

Although the administrative law judge is mindful that conversation and speculation about the new competitor's store was not uncommon in the facility, the evidence shows that Mr. Hantelmann's ongoing conduct exceeded those permissible levels. The claimant's repetitive conduct in extolling the personal virtues of the owner of the new hardware store, the virtues of the new facility, and its opportunities, exceeded general conversation or speculation and were contrary to his current employer's expectations and reasonable standards of behavior that the employer had a right to expect. When confronted about the matter, Mr. Hantelmann did not deny the allegations that he had been soliciting employees and/or customers for his employer's competitor. Instead, the claimant made a tacit admission justifying his actions because he had not received a pay increase and because the new hardware store was a "good opportunity" for the claimant.

The claimant knew or should have known that open and repetitive solicitation for a competitor would jeopardize his employment and was contrary to his current employer's business interests. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment

compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay unemployment insurance benefits that he has received is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated February 17, 2010, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits that he has received is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw