

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SEAN C AUSTIN
Claimant

APPEAL NO. 07A-UI-03356-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE PRINTER INC
Employer

OC: 03/04/07 R: 02
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sean Austin filed an appeal from a representative's decision dated March 29, 2007, reference 01, which denied benefits based on his separation from The Printer, Inc. After due notice was issued, a hearing was held on April 30, 2007 in Des Moines, Iowa. Mr. Austin participated personally and Exhibits A and B were admitted on his behalf. The employer participated by Chad Coffin, Human Resources Manager, and Dave Whitlatch, Digital Press Manager.

ISSUE:

At issue in this matter is whether Mr. Austin was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Austin was employed by The Printer, Inc. from January 10, 2005 until March 1, 2007. He was last employed full time as a digital press operator. He was discharged because a job he ran on February 25, 2007 was printed on the incorrect shell document. The employer learned of the problem on March 1. There were two similar shells for the customer and Mr. Austin asked a coworker, who had more experience than he, whether he was using the correct shell. The coworker indicated she thought it was correct. The employer's proofreader reviewed pull sheets for the job and indicated it was correct. Mr. Austin had never used the incorrect shell stock on any prior occasions. He began working as a digital press operator on December 13, 2006 and received four days of training.

In making the decision to discharge, the employer also considered the fact that Mr. Austin was involved in an altercation with a coworker on February 7, 2007. The coworker called him a name and threatened to "kick his butt." Mr. Austin was on his way to call the manager when the coworker brushed against him. Mr. Austin responded by grabbing the coworker by the collar. The employer also considered the fact that Mr. Austin had been late to work on several occasions in February. The tardiness was caused by the fact that he had to wait for a childcare provider to arrive before he could leave for work. The tardiness ranged from nine minutes to over two hours. He made the employer aware of the problem. Mr. Austin was verbally warned

about the tardiness on February 27, 2007 and there were no further incidents of tardiness thereafter.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Before a disqualification from benefits may be imposed, the evidence must establish that the discharge was predicated on an act that constituted misconduct within the meaning of the law. 871 IAC 24.32(8). In the case at hand, Mr. Austin's discharge was prompted by the fact that he used the incorrect shell stock. He checked with an experienced coworker to determine which stock to use and had a good-faith belief that he was using the correct stock. Moreover, the employer's proofreader apparently believed he was using the correct stock as well. Mr. Austin's actions did not evince a willful or wanton disregard of the employer's interests or standards.

For the reasons cited above, the administrative law judge concludes that the conduct the employer learned of on March 1 did not constitute an act of misconduct. Although Mr. Austin had been late on several occasions and had been warned about it, he conformed his attendance to the employer's expectation once he was warned. The employer clearly did not feel his attendance was sufficient to warrant discharge as he was allowed to continue working in spite of the tardiness. Mr. Austin did have a physical confrontation with a coworker. However, the conduct occurred on February 7, almost one month before his separation. Therefore, the conduct did not represent a current act of misconduct.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to establish that Mr. Austin was discharged for a current act that constituted misconduct within the meaning of the law. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated March 29, 2007, reference 01, is hereby reversed. Mr. Austin was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css