

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN R WIEZOREK
Claimant

APPEAL NO. 10A-UI-12715-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

RURAL ELECTRIC SUPPLY COOP - ADP
Employer

OC: 07/04/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

John Wiezorek (claimant) appealed a representative's September 1, 2010 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Rural Electric Supply Coop (employer) for insubordination in connection with his work. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for September 29, 2010, in Des Moines, Iowa. The claimant participated personally. The employer participated by Drew Primrose, Regional Vice President, and Mark Keuning, Warehouseman.

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 having considered all of the evidence in the record, finds that: The claimant was hired on March 23, 2009, as a full-time warehouse coordinator. The claimant signed for receipt of the employer's handbook on March 27, 2009. The employer did not issue the claimant any warnings during his employment. The employer had talked to the claimant about late dismissal orders, unread e-mails, and the daily order log.

On June 29, 2010, the employer talked to the claimant and Mr. Keuning about performance issues. The claimant told the employer that he did not receive e-mails when the claimant had received the e-mails. The employer knew the claimant had received the e-mails because the computer department confirmed the e-mails had reached the claimant's computer. The employer told the claimant he was lying. The claimant stood up, yelled, and slammed the employer's desk. Three times the claimant said, "I want you to leave me the fuck alone". He left the office before the meeting had ended and yelled from the hall, "Fuck this." The employer was frightened and had an employee contact law enforcement. The claimant was sent home for the day. The following day, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior that an employer has a right to expect of its employees. The claimant's actions were volitional. He intentionally yelled inappropriate language and hit the desk with his hands. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's September 1, 2010 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw