

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERMAINE W BLACKWELL
Claimant

APPEAL NO. 13A-UI-11633-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES INC
Employer

OC: 09/08/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jermaine Blackwell (claimant) appealed a representative's October 11, 2013, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with APAC Customer Services (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 7, 2013. The claimant participated personally. The employer provided a telephone number but could not be reached at the time of the hearing. The administrative law judge spoke to a woman who answered the telephone. She indicated the employer was not at work yet. A message was left for the employer.

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 November 10, 2010, as a full-time customer service representative. The employer did not issue the claimant any warnings during his employment. The claimant met weekly with his team lead to discuss his performance.

In May 2013, the claimant was assigned a new team lead. The claimant protested the assignment because the team lead treated him poorly. He filed multiple complaints with his operations manager regarding the hostile work environment the new team lead was creating but he was not moved to work under another team lead. On September 3, 2013, the claimant met with the team lead and they discussed a telephone call. The claimant asked to listen to the call. The team lead told him she did not have time for him and he could leave the meeting if he did not want to continue. The claimant was upset. He pushed the wheeled chair away from the table to stand up. As he was walking back to his work area he was told he was too upset to work. The employer placed him on administrative leave. On September 5, 2013, the employer terminated the claimant because the team lead said she was afraid of him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes he was not 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). 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 October 11, 2013, decision (reference 02) 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/css