

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELMER E FLEAGLE**  
Claimant

**APPEAL NO. 08A-UI-11168-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PATTERSON DENTAL SUPPLY INC**  
Employer

**OC: 10/26/08 R: 02  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Patterson Dental Supply, Inc., filed a timely appeal from an unemployment insurance decision dated November 18, 2008, reference 01, that allowed benefits to Elmer E. Fleagle. After due notice was issued, a telephone hearing was held December 17, 2008, with Mr. Fleagle participating. Roxanne Rose of ADP/UCM represented the employer in the hearing. The employer's scheduled witness, Christopher Levi, could not be contacted by telephone. The administrative law judge left a message including the telephone number of the Appeals Section at Mr. Levi's office. There was no contact from him prior to the closing of the record.

**ISSUES:**

Did the claimant quit employment or was he discharged?

Was the separation a disqualifying event?

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Elmer E. Fleagle was employed by Patterson Dental Supply, Inc., from 1993 until October 29, 2008. He last worked full time as an equipment coordinator. On the morning of October 28, 2008, Christopher Levi struck the wall of Mr. Fleagle's cubicle sharply as he walked by. Mr. Fleagle is a Vietnam veteran and finds sudden noises disconcerting. He cautioned Mr. Levi about the incident. Upset at what had happened, Mr. Fleagle left for the balance of the day.

He returned on October 29, 2008, and spoke to Mr. Levi. He told Mr. Levi that something like the event of the previous day could trigger a violent reaction from him. Mr. Levi told Mr. Fleagle that he, Mr. Fleagle, was threatening management and should leave. Believing that he had been discharged, Mr. Fleagle did so. On October 30, 2008, Mr. Fleagle contacted the corporate human resources department in an attempt to retain his employment. He received no response.

## REASONING AND CONCLUSIONS OF LAW:

The first question is whether the separation should be characterized as a quit or as a discharge. From the evidence in the record, the administrative law judge concludes that it should be treated as a discharge. Although Mr. Levi did not speak the exact words of dismissal, he told Mr. Fleagle to leave the premises. Mr. Fleagle attempted to retain his employment by talking to the corporate human resources department. This indicates to the administrative law judge that Mr. Fleagle did not have the intention of resigning. Given these two facts, the separation is better characterized as a discharge.

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. See Iowa Code section 96.6-2. As noted above, the employer's witness could not be contacted for the hearing. The claimant's testimony does not establish misconduct. Benefits are allowed.

**DECISION:**

The unemployment insurance decision dated November 18, 2008, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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