

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN R ERNST**  
Claimant

**APPEAL NO. 07A-UI-03910-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDWEST GLAZING**  
Employer

**OC: 03/11/07 R: 03  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

John Ernst (claimant) appealed a representative's April 12, 2007 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Midwest Glazing (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 held on May 1, 2007. The claimant participated personally. The employer participated by Barb Grimm, Administrative Assistant to Chief Financial Officer.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**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 December 15, 2005, as a full-time laborer. The claimant signed for receipt of the company handbook on December 15, 2005. The claimant quit work on February 14, 2006. On February 24, 2006, the claimant was rehired as a full-time branch manager. The claimant heard rumors that the employer would cease doing business in the claimant's area in the near future. He prepared to open his own business during non-working hours. He was laying the ground work for a new company but not in competition with the employer. The claimant did not solicit any business or workers for his company. In February 2007, he registered the company with the Secretary of State and started a website.

On March 14, 2007, a vendor told the employer that the claimant was competing with the employer. On March 15, 2007, the employer terminated the claimant.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant 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). Although only preparing or making arrangements to enter into competition with one's employer does that employer no legally cognizable harm, soliciting fellow employees to leave their work in favor of a competitor breaches the employee's common law duty of loyalty. Porth v. Iowa Department of Job Service, 372 N.W.2d 269 (Iowa 1985). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide sufficient evidence of misconduct at the hearing. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's April 12, 2007 decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw