

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALFRED L KNOX
Claimant

APPEAL NO. 07A-UI-09664-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 09/09/07 R: 02
Claimant: Respondent (1)

Section 96.5(2) – Discharge

STATEMENT OF THE CASE:

The employer, Express Services, filed an appeal from a decision dated October 12, 2007, reference 01. The decision allowed benefits to the claimant, Alfred Knox. After due notice was issued, a hearing was held by telephone conference call on October 30, 2007. The claimant participated on his own behalf. The employer participated by Personnel Supervisor Kerri Peterson.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Alfred Knox was employed by Express Services from October 2, 2006 until July 27, 2007. His last assignment began December 1, 2006, at Rees Associates. On July 26, 2007, Personnel Supervisor Melissa Cory received an e-mail from the client's human resources department asking the claimant be removed. The client stated it was having difficulty getting other employees to work with Mr. Knox and that he spent too much time "wandering around and socializing" instead of working.

The claimant denied ever being warned by the client company's representative about failing to do his assigned work and claimed that he "got along with everyone."

REASONING AND CONCLUSIONS OF LAW:

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 to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The employer could not present any evidence of specific incidents, or prior warnings, regarding the claimant's conduct which prompted the client to request his removal. Mr. Knox denied "wandering around and socializing" and that no one would work with him. Express Services has failed to rebut this denial and has not met its burden of proof.

DECISION:

The representative's decision of October 12, 2007, reference 01, is affirmed. Alfred Knox is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css