

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS M HOWARD
Claimant

APPEAL NO. 100-UI-02108-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EUGENE HISKEY
VEH ENTERPRISES
Employer

Original Claim: 10/04/09
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Dennis Howard, filed an appeal from a decision dated October 26, 2010, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 23, 2010. The claimant participated on his own behalf. The employer, VEH Enterprises, participated by Owner Eugene Hiskey and Counter Help Christopher Valin.

ISSUE:

The issue is whether the claimant discharged

FINDINGS OF FACT:

Dennis Howard was employed by VEH Enterprises from October 2, 2006 until October 2, 2009 as a part-time employee. The company has a dress code that varies for the summer and winter seasons. Usually there was no specific date established for the change, but on September 21, 2009, a memo was sent out specifying October 1, 2009, as the date the winter dress code of white shirt and dark slacks would take effect. The memo stated “if any employee does not feel they can not follow this code, their services will be terminated.”

Mr. Howard was aware of the date the dress code was to change but on October 2, 2009, he was still dressed in the dress code for summer. He did not have the money to purchase the new clothing until he was paid later in the week and Owner Eugene Hiskey had in the past always been lenient regarding the date the dress code change would take effect. The claimant assumed the employer would be lenient for a couple of days on this occasion and had not discussed with Mr. Hiskey that he had not yet purchased the necessary clothes.

Mr. Hiskey arrived at the cleaners on October 2, 2009, just as the claimant was leaving for the day. He wanted to discuss with Mr. Howard his failure to observe the dress code and the discussion became acrimonious on both sides. The employer finally told the claimant to “get out,” at which time Mr. Howard surrendered his key and left.

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 maintained the claimant had quit by "walking out" of the store and refusing to comply with the dress code. The record does not support this contention. The claimant was leaving because it was the end of his shift. There is no evidence he was refusing to abide by the dress code, merely that he had not yet been paid and did not have the money to buy the new clothes before the deadline. Mr. Howard made an erroneous assumption that Mr. Hiskey would not immediately enforce the dress code and he would have a few days to meet the requirement.

There is evidence the two individuals became involved in an acrimonious exchange, which is equally the fault of both of them. Both the claimant and the employer made improper remarks to one another, but this appears to be an isolated incident. The employer did not provide any testimony that the claimant had been warned in the past about his attitude or his failure to abide by the dress code.

The claimant was discharged for failing to meet the dress code by one day. This is an isolated incident of poor judgment on Mr. Howard's part of not preparing for the change before hand and by assuming he would have a few days' grace as in the past. The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262(Iowa App.

1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment benefits are two separate decisions. *Pierce v. IDJS*, 426 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Newman v. IDJS*, 351 N.W.2d 806 (Iowa App. 1984). The administrative law judge cannot conclude this one-time error in judgment rises to the level of substantial, job-related misconduct and disqualification may not be imposed.

DECISION:

The representative’s decision of October 26, 2009, reference 01, is reversed. Dennis Howard is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw