

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KURT HANSON
Claimant

APPEAL NO. 10A-UI-04147-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

T & R CUSTOM TOPS CO
Employer

**Original Claim: 02-21-10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 12, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 29, 2010. The claimant participated in the hearing. Tom Wetter, President/Owner, and Attorney Joel Yunek participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time laborer/shop worker for T & R Custom Tops from August 1, 2007 to February 22, 2010. On February 8, 2010, the claimant asked President/Owner Tom Wetter if he could have February 18 and 19, 2010, off work to go to Minnesota with his wife. Mr. Wetter explained that he was going to be gone at the same time because he had plane tickets to Arizona purchased six months in advance and with a three-person shop, they could not both be gone. Mr. Wetter believed he made it perfectly clear that the claimant could not be absent February 18 and 19, 2010. On February 15, 2010, the claimant told Mr. Wetter he was going north to take a seminar on a type of counter top February 18, 19, and 20, 2010. Mr. Wetter told him he did not care if he was going into competition with him, but he could not let him go to Minnesota. On February 17, 2010, Mr. Wetter asked the claimant if he was still leaving and the claimant said yes. Mr. Wetter gave him a letter of resignation, but the claimant said he was not resigning and refused to sign the letter. Mr. Wetter prepared another letter stating his employment would be terminated if he did not show up February 18 and 19, 2010, and the claimant threw the letter back at him "in disgust" without reading it, cleaned out his locker, and left, so the employer sent him the letters by certified mail. The claimant did not show up for work or call the employer February 18 or 19, 2010, and the employer had to hire an individual to go to Des Moines and pick up materials in his place. The employer terminated his employment for disregarding Mr. Wetter's refusal to allow him the time off and taking it anyway, despite the employer's clear instructions that he

could not leave for those two days. The claimant did not have any vacation left at the time. Mr. Wetter did allow him to go on a snowmobiling trip in January 2010 without any vacation time because they were not busy at the time and the other two employees were both going to be at work during the time he was going to be gone.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 claimant requested February 18 and 19, 2010, off work February 8, 2010, but his request was denied by Mr. Wetter, who told him that he was going to be out of town at the same time, that he had had his plane tickets for six months, and that he could not leave the business with just one employee present. The claimant did not accept that decision, however, and told Mr. Wetter February 15, 2010, he was still going to Minnesota February 18, and 19, 2010. Mr. Wetter again told him he could not go. On February 17, 2010, Mr. Wetter asked if was still planning to leave the next day; and when the claimant indicated he was, Mr. Wetter prepared a resignation letter for him, which the claimant declined to sign. Mr. Wetter than prepared a letter informing the claimant what would happen if he left, but the claimant threw it back at him without reading it, cleaned out his locker, and left. The claimant knew the consequences if he left that day, yet chose to go anyway. He made his decision about his employment by deciding to go to

Minnesota and miss two workdays without permission from the employer. The administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The March 12, 2010, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw