

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GEORGE J GLASGOW
Claimant

APPEAL NO: 12A-UI-03163-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCLOUD CONSTRUCTION LLC
Employer

**OC: 01/29/12
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

George J. Glasgow (claimant) appealed a representative's March 22, 2012 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from McCloud Construction, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 11, 2012. The claimant participated in the hearing. Sherrie McCloud appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on September 13, 2011. He worked full time as a worker in the employer's insulation and weatherization community service business. His last day of work was December 9, 2011. The employer discharged him on December 12, 2011. The reason asserted for the discharge was having a poor attitude. The employer presented generic testimony that the claimant also had poor job performance, but no specifics were provided as to any performance issues near December 9; the employer indicated that it was "a buildup of a lot of general things." The employer asserted that part of the claimant's recent "poor attitude" was that the claimant had repeatedly threatened to quit, most recently on December 9.

The claimant denied saying that he was quitting on December 9; he acknowledged that he made a remark to the effect that he "can't keep working for someone who is cheating me out of money." His reference was to a dispute he had with the employer regarding a week's worth of

pay for a week in October which he had not received. The claimant had previously raised this issue with the employer, but had not received satisfaction. The claimant then had a conversation with the employer's contractor's inspector on the work site on December 8 in which that inspector told the claimant that if he was having trouble getting paid for work performed with the employer, he needed to report it to the contractor, so the claimant did make his complaint to that inspector.

The claimant suspected that at some time after his conversation with the inspector on December 8 that the inspector relayed the claimant's complaint to the employer's operating owner, because at the end of the work day on December 9, a Friday, the employer's operating owner gave no indication that the claimant's employment might be ending, but rather told the claimant he would give him a call on Sunday evening, December 11, to let the claimant know what the work schedule would be for Monday, December 12. However, the operating owner did not call the claimant on December 11. The claimant made several attempts to contact the operating owner on December 12, and when he finally reached him, the operating owner only told him that he did not need him anymore because of the claimant's "poor attitude." The employer was subsequently compelled to pay the claimant for the missing wages because of further intervention by the employer's contractor later in December.

The claimant established an unemployment insurance benefit year effective January 29, 2012. His weekly benefit amount was calculated to be \$189.00. He received unemployment insurance benefits through March 17, 2012 in a total amount of \$1,134.00. He has subsequently earned requalifying wages in other employment in excess of \$1,890.00. Another representative's decision has been issued on October 17, 2012 (reference 06) concluding that the employer's account was no longer subject to charge.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his “poor attitude” and a buildup of other “general things.” Conduct asserted to be disqualifying misconduct must be both specific and current. *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988); *West v. Employment Appeal Board*, 489 N.W.2d 731 (Iowa 1992). Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant committed any specific or current act of misconduct. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative’s March 22, 2012 decision (reference 03) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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