

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL L REA
Claimant

APPEAL NO. 09A-UI-06660-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACTION WAREHOUSE CO LTD
Employer

OC: 12/09/07
Claimant: Respondent (1)

Section 96.5(2)a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer, Action Warehouse, filed an appeal from a decision dated December 9, 2008, reference 05. The decision allowed benefits to the claimant, Michael Rea. After due notice was issued, a hearing was held by telephone conference call on May 26, 2009. The claimant participated on his own behalf. The employer participated by Sales Manager Maria Endres. Exhibit D-1 was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

A disqualification decision was mailed to the employer's last-known address of record on December 9, 2008. The office location for this division of this employer was at another address. It is uncertain whether the decision arrived at the address of record but it was not forwarded to the other office location. An appeal was filed from a subsequent decision in the claimant's next benefit year.

Michael Rea was employed by Action Warehouse from September 11 until October 24, 2008. His last assignment began October 20, 2008, at Firestone for an indefinite period of time. He was working Friday, October 20, 2008, and became disoriented and incoherent. The client company asked for him to be removed from the assignment because the supervisor believed he was under the influence of a controlled substance. The claimant was eventually taken by a security guard to Broadlawns hospital for treatment.

Mr. Rea admitted he was confused and disoriented on the night in question but it was due to him having a migraine headache. He had not taken any medication, over the counter or prescription, or any controlled substance and maintained the drug test results from the samples taken at Broadlawns were negative. But he had already been informed by the employer the

assignment was over before the test results were available, and Action Warehouse declined to accept him for any further assignments.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The judge will err on the side of caution and allow the employer's appeal, even though the witness who testified did not have any first-hand knowledge of the claimant's physical personnel file or the receipt of the decision in the secondary office.

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). In the present case the employer relied solely on the client's accusations the claimant was under the influence to discharge him. No actual first-hand, eyewitness testimony regarding the incidents of October 24, 2008, were presented, nor any test results showing positive for drugs or alcohol. The claimant denied being in any inebriated condition and was only suffering from a migraine headache for which he had not taken any medication. The employer has failed to rebut the claimant's testimony denying any wrongdoing and disqualification may not be imposed.

DECISION:

The decision of the representative dated December 9, 2008, reference 05, is affirmed. The employer's appeal shall be accepted as timely, but the decision of the representative is affirmed. Michael Rea is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css