

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM D SLAUGHTER
Claimant

APPEAL NO. 12A-UI-09562-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**LA LEASING
SEDONA STAFFING**
Employer

**OC: 04/08/12
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Sedona Staffing, filed an appeal from a decision dated July 31, 2012, reference 03. The decision allowed benefits to the claimant, William Slaughter. After due notice was issued a hearing was held by telephone conference call on August 30, 2012. The claimant participated on his own behalf. The employer participated by Workers' Compensation Administrator Chad Baker and Account Manager Sammy Teal. Exhibits One and Two were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

William Slaughter was employed by Sedona from January 2006 until July 3, 2012. His last assignment began May 3, 2012, at NIS, Inc. On June 14, 2012, he fired another Sedona employee who was working there, Charlotte Robison. He has the authority to fire other temporary employees because he was a supervisor, but the employer believed the reason for the discharge was due to a personal "vendetta" between Mr. Slaughter and Ms. Robinson's spouse. The two of them had worked together at another company and there were bad feelings between the two of them.

On June 14, 2012, Mr. Slaughter contacted the NIS supervisor and asked if he could fire Ms. Robinson for harassment. His request was granted. Later the discharge was investigated as a possible personal matter rather than any work-related problems. Mr. Slaughter was less than truthful about knowing Ms. Robinson as he denied knowing her.

Statements from other employees established he had known who she was from the very beginning of his assignment and had made various comments about her, one being that she would be "the first to go." He referred to himself as "the firing king," and referred to her as "Little Miss My Shit Doesn't Stink."

The investigation by NIS established the claimant had made the request to discharge Ms. Robinson but he had earlier led the investigators to believe he was only following instructions from his supervisor. In addition, the problem for which she had been discharged is not a dischargeable offense on the first incident but would be subject to progressive discipline.

He was fired by NIS on June 24, 2012, after the investigation. Sedona then did its own investigation and determined the claimant had acted inappropriately from personal motivation rather than any legitimate work-related problem. It was felt he had conducted himself inappropriately while representing Sedona at the client's business and was discharged.

William Slaughter has received unemployment benefits since filing an additional claim with an effective date of June 24, 2012.

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.

While on assignment for the employer the claimant was required to conduct himself professionally and appropriately as a representative of Sedona. His conduct was unacceptable given the rude remarks made about another Sedona employee, boasting of himself as "the firing king" and stating in advance that a certain other employee would be "the first to go." The administrative law judge does consider the discharge of Ms. Robinson to be motivated by

personal animosity rather than any legitimate business related matters. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of July 31, 2012, reference 03, is reversed. William Slaughter is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs