

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES A BOLDEN

Claimant

APPEAL NO. 11A-UI-07561-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC

Employer

OC: 07/04/10

Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

James Bolden filed an appeal from a representative's decision dated June 7, 2011, reference 06, which denied benefits based on his separation from Express Services, Inc. After due notice was issued, a hearing was held on July 7, 2011, in Des Moines, Iowa. Mr. Bolden participated personally. The employer did not appear for the hearing.

ISSUE:

At issue in this matter is whether Mr. Bolden was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Bolden began working through Express Services, Inc., a temporary placement firm, on April 4, 2011. He was assigned to work full-time as a laborer for ABX Air. On April 17, he mentioned to his supervisor that he was soon to be released from probation after being charged with possession of marijuana with the intent to deliver. When the supervisor learned that the charge was a felony charge, Mr. Bolden was told he could not work for ABX Air until the charges were expunged from his record.

The charges against Mr. Bolden originated in May of 2009. He was granted a deferred judgment and placed on probation for two years. The application for work with Express Services, Inc. asks whether the applicant had been convicted of a crime or released from jail within the past seven years. Mr. Bolden indicated "yes." He also verbally advised Express Services that he was on probation. After his separation from ABX Air, he was told he could no longer work for Express Services because he had given false information regarding his criminal background.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had

the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Bolden was discharged based on an allegation that he falsified his application for hire. The administrative law judge need not determine whether his deferred judgment constituted a "conviction." He believed he had been convicted and, therefore, indicated a "yes" response on the application when asked if he had been convicted. The fact is that he was truthful in his response to the question asked on the application.

Mr. Bolden notified Express Services on the application and in conversation that he had criminal charges on his record. The employer has not alleged any other falsification on the application. For the reasons stated herein, the administrative law judge concludes that there was no falsification on the application for hire. Inasmuch as no other reason was given for the separation, it must be concluded that the employer has failed to satisfy its burden of proving that Mr. Bolden should be disqualified from receiving benefits.

DECISION:

The representative's decision dated June 7, 2011, reference 06, is hereby reversed. Mr. Bolden was discharged by Express Services, Inc., but misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw