

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

IAN R GABBARD
2225 GRAND AVE APT 311
DES MOINES IA 50312-5320

ALLEY'S CONDITION-AIR
& REFRIGERATION INC
7020 SUNSET TER
WINDSOR HEIGHTS IA 50311

Appeal Number: 06A-UI-06035-HT
OC: 04/16/06 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Alley's Condition-Air and Refrigeration, Inc., (Alley's), filed an appeal from a decision dated May 30, 2006, reference 04. The decision allowed benefits to the claimant, Ian Gabbard. After due notice was issued, a hearing was held by telephone conference call on June 29, 2006. The claimant participated on his own behalf. The employer participated by President Steve Alley.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Ian Gabbard was employed by Alley's from March 1 until April 14, 2006. He was a part-time service technician trainee.

The employer believed the claimant to have "walked off" the job on two occasions, April 1 and 5, 2006. Mr. Gabbard had been assigned to work on a cooler at a restaurant on April 1, 2006, and found the job beyond his abilities. He believes he contacted the employer to say he could not do the job and the employer believes he called only for technical advice. Mr. Gabbard had expected President Steve Alley to come and finish the job so he left. The next day the restaurant owner called and said the cooler was disassembled and needed to be repaired and Mr. Alley went and finished up the job.

On April 5, 2006, Mr. Gabbard was to work on a condenser at Oakmoor office building, but after he began the job he felt the equipment and the problem differed enough from his prior experience that it would not be safe for him or the equipment for him to continue. He notified Mr. Alley and suggested the two of them could go over early the next morning to deal with it. The employer thought the claimant was saying he would "sneak over" early the next morning to finish the job and he told Mr. Gabbard not to do that.

On April 13, 2006, the claimant had agreed to work on the personal vehicle of Mr. Alley's wife. The employer thought he had communicated to Mr. Gabbard that, whether or not the vehicle was repaired by noon, he should still call in and get his afternoon assignments. The claimant thought his job for the day was fixing the vehicle and called around 5:00 p.m. to say it was finished. The employer felt the claimant had failed to keep in contact with him and discharged him the next day, saying, "We're done."

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The record does not establish the claimant was guilty of willful and deliberate misconduct. Having assessed the testimony presented, the administrative law judge can only conclude the problems between claimant and employer arose out of a serious lack of communication. The perceptions of the phone calls and incidents given by each of the parties shows this quite clearly. This conclusion is reinforced by the employer's admission that he not only did not give any prior warnings to the claimant about the incidents on April 1 and 5, 2006, but he failed to even give a reason for the discharge.

Lack of communication between claimant and employer resulted in dissatisfaction between the parties. While this may be grounds for discharge, conduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984). Disqualification may not be imposed.

DECISION:

The representative's decision of May 30, 2006, reference 04, is affirmed. Ian Gabbard is qualified for benefits, provided he is otherwise eligible.

bgh/cs