

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JARON BRIDGES
Claimant

APPEAL NO: 09A-UI-11151-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AADG INC
Employer

OC: 06/07/09
Claimant: Appellant (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Jaron Bridges (claimant) appealed an unemployment insurance decision dated July 27, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from AADG, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 19, 2009. The claimant participated in the hearing. The employer participated through Dan McGuire, Employee Relations Manager and Mike Eppens, Area Manager. Employer's Exhibits One and Two were admitted into evidence. 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:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time production laborer from July 31, 2006 through July 1, 2009. He was placed on a third step corrective action on February 5, 2009 due to a positive, post-accident drug test. An employee is discharged if the employee reaches a fourth corrective action warning within 12 months of receiving a third corrective action warning.

The claimant was discharged after receiving a fourth step disciplinary warning for reportedly using threatening and abusive language towards a co-worker on June 30, 2009. The employer said the claimant made comments like, "When we get outside, I will take you down pussy...let me catch you outside of work...I ain't no one to mess with pussy." The claimant admits he argued with his co-worker but denies using threatening and abusive language. He contends that the work environment is contentious and people argue with each other every day. The employer offered no first hand testimony but did present numerous documents signed by witnesses, but the documents were not completely consistent.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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 § 96.5-2-a.

Iowa Code § 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on June 30, 2009 for a fourth step corrective action warning, which was within 12 months from his third step corrective action warning. The final warning resulted from the claimant's alleged use of threatening and abusive language but the claimant denies using threatening and abusive language. The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct, particularly since its own evidence is not completely consistent. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated July 27, 2009, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css