

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIANDRE C FLETCHER

Claimant

APPEAL NO. 13A-UI-04939-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC

Employer

OC: 12/23/12

Claimant: Appellant (3)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated April 19, 2013, reference 02, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on July 10, 2013. Claimant participated. The employer participated by Ms. Rhonda Hefter De Santisteban and Ms. Megan Kugler, Branch Manager. Employer's Exhibit A was received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Briandre Fletcher was employed by the captioned temporary employment service from January 31, 2013 until March 26, 2013 when he was discharged from employment. Mr. Fletcher was most recently assigned to work at the Berge Cabinet Manufacturing Company and was being paid by the hour.

Mr. Fletcher was discharged on March 26, 2013 when he failed to follow a reasonable and work-related directive to come into QPS Employment Group's office to be issued a warning about expected job performance.

Mr. Fletcher had been removed from his current assignment at the client's request because of his conduct that day. Because Mr. Fletcher was the employee of QPS Employment Group, QPS believed it necessary to counsel Mr. Fletcher on job expectations before Mr. Fletcher was assigned to the next job assignment by QPS.

Mr. Fletcher did not agree that he needed to be warned in any manner and felt that his job performance had been good. Based upon Mr. Fletcher's refusal to come to the facility to be warned that day or soon thereafter, QPS Employment Group ended the employment relationship with Mr. Fletcher and the claimant was not further assigned.

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.

In discharge cases the employer has the burden of proof. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter Mr. Fletcher was discharged on March 26, 2013 based upon his unwillingness to follow a reasonable and work-related directive to come in to be counseled about his future expected work performance and demeanor. The claimant had been removed from an assignment that day at the client's request because of Mr. Fletcher's conduct on the job and QPS Employment Group was reasonable in concluding that it would be in QPS's and the claimant's best interests if Mr. Fletcher was counseled about the employer's expectations in the future. The claimant's failure to follow a reasonable work-related directive was contrary to the employer's interests and standards of behavior that the employer had a right to expect of its employees under the provisions of the Iowa Employment Security Law. Unemployment insurance benefits are therefore withheld.

DECISION:

The representative's decision dated April 19, 2013, reference 02, is affirmed as modified. The portion of the determination disqualifying the claimant from receiving benefits is affirmed. The portion of the determination finding that the claimant voluntarily quit employment is modified to find that the claimant was discharged under disqualifying conditions. Mr. Fletcher is disqualified from receiving unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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