

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD J HOFFMAN
Claimant

APPEAL NO. 12A-UI-12876-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACT INC
Employer

OC: 09/23/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Act Inc. filed a timely appeal from an unemployment insurance decision dated October 17, 2012, reference 01, that allowed benefits to Richard J. Hoffman. After due notice was issued, a telephone hearing was held November 28, 2012 with Mr. Hoffman participating. Talent Resource Partner Deb Schreiber and Logistics Manager Chris Shetler participated for the employer. Employer Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Richard J. Hoffman was employed by Act Inc. from March 6, 2000 until he was discharged September 28, 2012. The final incident leading to discharge occurred September 19, 2012. Mr. Hoffman was a dock worker. The workplace was high volume and high stress. Only two other employees were working on the dock on September 19, 2012. Mr. Hoffman's supervisor, Zach Westerdahl reprimanded him verbally because of work that was not being completed. Fifteen to twenty minutes later as Mr. Hoffman was operating equipment near Mr. Westerdahl's cubicle, Mr. Westerdahl approached him again. Words became heated. Supervisor Mike Haight overhead the situation and approached to listen but did not intervene. When the confrontation ended, Mr. Westerdahl sent a message to Logistics Manager Chris Shetler with his version of what had happened. Two days later, Mr. Shetler asked Mr. Hoffman for a written account of the incident from his perspective. Mr. Hoffman had not submitted one as of the date that he was discharged. Mr. Hoffman had received prior warnings but had received a satisfactory performance evaluation since the date of the last warning.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does 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.

The employer has the burden of proof. See Iowa Code section 96.6-2. None of the employer witnesses had first-hand knowledge of the final incident leading to the discharge. Mr. Westerdahl had been listed as a witness but was not called by the employer and was not present for the hearing. Mr. Haight was not called as a witness as well. Mr. Hoffman's testimony that Mr. Westerdahl initiated the final incident has not been contradicted. The employer has not established by a preponderance of the evidence that the final incident leading directly to the decision to discharge was a current act of misconduct. It establishes only a verbal disagreement between Mr. Hoffman and Mr. Westerdahl on a stressful day. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated October 17, 2012, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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