

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL D VICE
Claimant

APPEAL NO. 09A-UI-10821-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STERLING INC - BELDON JEWELERS
Employer

OC: 06/14/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sterling, Inc. filed an appeal from a representative's decision dated July 20, 2009, reference 01, which held that no disqualification would be imposed regarding Paul Vice's separation from employment. After due notice was issued, a hearing was held by telephone on August 28, 2009. Mr. Vice participated personally. The employer participated by Kevin Joseph, District Repair Manager; and Rick Erickson, Floor Supervisor.

ISSUE:

At issue in this matter is whether Mr. Vice 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. Vice was employed by Sterling, Inc. from September 2, 2002 until June 15, 2009. He was last employed full time as repair shop manager, a position he assumed in March of 2005. The employer received two written statements on April 30, 2009 alleging inappropriate conduct on Mr. Vice's part.

One of the written statements was from Rick Erickson, a floor supervisor, who indicated that Mr. Vice had been disrespectful to him when he went to the shop to inquire about having a customer's bracelet repaired. He indicated that Mr. Vice commented in the presence of other employees that Mr. Erickson needed to be trained by his managers. He also indicated that Mr. Vice was making loud comments from the repair shop after Mr. Erickson returned to the customer with the bracelet. The other April 30 statement was from a different employee. The other employee unlocked the door for Mr. Vice to leave and, as he was doing so, Mr. Vice told him to kick Mr. Erickson in the "nuts." Both statements were turned over to human resources on April 30.

On June 11, the employer received another written statement concerning Mr. Vice and comments he had made approximately four weeks earlier. During the interim between April 30 and June 11, no disciplinary action had been taken against Mr. Vice and human resources had not spoken to him about the earlier statements. The June 11 statement indicated that Mr. Vice said he could not stand Mr. Erickson and that he needed to be dragged a mile or two behind a

vehicle. Mr. Vice denied making any of the statements attributed to him by his coworkers. He was notified of his discharge on June 15, 2009. He had not been disciplined for any matters since December 18, 2006,

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). The employer's burden included establishing that the discharge was predicated on a current act that constituted misconduct within the meaning of the law. See 871 IAC 24.32(8). In the case at hand, it was apparently the June 11, 2009 statement that prompted the decision to discharge Mr. Vice on June 15.

Mr. Vice denied making the comments attributed to him in the statement of June 11. The author of the statement was not offered as a witness either voluntarily or by subpoena. The employer had no independent evidence to support the allegations contained in the statement. Given the state of the evidence, the administrative law judge cannot conclude that Mr. Vice made threatening or disparaging comments in reference to Mr. Erickson. It is concluded, therefore, that the June 11 statement did not establish an act of misconduct.

The next most prior incidents occurred on April 30, 2009. Management was immediately made aware of the allegations but took no steps to discipline Mr. Vice. The employer suggested at one point that the employer was investigating the matter to be sure the appropriate steps were taken. By May 9, the investigator had spoken to the employees who were present on April 30. However, no disciplinary action was taken within a reasonable amount of time following May 9. The employer did not present evidence from the investigator to establish that there was, in fact, an ongoing investigation.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to establish that Mr. Vice was discharged for a current act of misconduct. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, no disqualification is imposed.

DECISION:

The representative's decision dated July 20, 2009, reference 01, is hereby affirmed. Mr. Vice was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css