

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID A SHANNON

Claimant

APPEAL NO. 11A-UI-07412-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EVERGREEN MANAGEMENT COMPANY

Employer

OC: 04/24/11

Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

David Shannon (claimant) appealed a representative's May 31, 2011 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Evergreen Management Company (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 29, 2011. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate in the hearing.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired in September 2009 as a full-time night auditor. The claimant signed for receipt of the employer's handbook. The employer did not issue the claimant any warnings during his employment.

On April 21, 2011, a co-worker yelled at the claimant in front of guests. The claimant asked her to talk about this out of guests' hearing. The coworker refused. On April 22, 2011, the co-worker's mother yelled at the claimant. The claimant relayed both incidents to the general manager shortly after each happened. The claimant was not scheduled on April 23, 2011, but called the general manager asking for a meeting to resolve the situation. The general manager did not respond to the claimant's request. On April 24, 2011, the claimant was not scheduled to work and called again, but the general manager did not respond to the claimant's request. On April 25, 2011, the claimant was not scheduled to work and e-mailed the general manager, indicating he could not work in a hostile environment. The general manager did not respond. On April 26, 2011, the claimant sent an e-mail to the regional manager about his concerns. The regional manager forwarded it back to the general manager. On April 26, 2011, the claimant appeared for work. The general manager refused to allow the claimant to return to work. The general manager stated that the claimant's behavior made coworkers feel uncomfortable.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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 in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's May 31, 2011 decision (reference 01) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw