

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHAN A COOK
Claimant

APPEAL NO. 16A-UI-09026-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

VERO BLUE FARMS USA INC
Employer

OC: 07/24/16
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Vero Blue Farms USA Inc. filed a timely appeal from a representative's decision dated August 8, 2016, reference 01, which held claimant eligible to receive unemployment insurance benefits finding the claimant was dismissed on July 13, 2016 but finding the employer did not furnish sufficient evidence to show misconduct. After due notice was provided, a telephone hearing was held on September 7, 2016. The claimant participated. The employer participated by Ms. Shelby Meadows, Human Resource Consultant/Hearing Representative, and witnesses: Ms. Katie Olson, Operations Liaison and Ms. Kelsey Clarken, Human Resource Recruiter.

ISSUE:

The issue was 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: Stephan Cook began employment with Vero Blue Farms USA Inc. on January 10, 2015 when the company took over the farming operations of a predecessor employer. Mr. Cook was employed until July 13, 2016 when he was discharged by the company. Claimant worked as a full-time farm helper and was paid \$15.00 per hour. His immediate supervisor was Mr. Matt Clarken.

Mr. Cook was discharged from employment on July 13, 2016 as a result of an incident that had taken place the preceding day, July 12, 2016. On that date, Ms. Olson as well as other company executives were presenting information about the new employer's non-disclosure agreement requirements and potential stock options for employees. A number of the non-disclosure agreement provisions had been the subject of open discussion before the stock option portion of the meeting started.

Mr. Cook noted that although he had been employed by the predecessor company for a period of time, he was not listed as an employee who was authorized stock options. As the meeting concluded, Mr. Cook approached the table where Ms. Olson and other management were

seated and stated in effect that he was not signing the non-disclosure agreement and added, "I'm going to sue the company for disability discrimination, if I don't get the stock options." Because Mr. Cook's demeanor appeared serious, Ms. Olson, as well as others, took the claimant's statements literally and were surprised not only at the statement but also in the manner that it was stated. Mr. Cook completed his duties that day but took a copy of the company's non-disclosure agreement home with him for further study.

After Ms. Olson and other management further considered the claimant's statement and the circumstances, they concluded the claimant had not been joking and that his threat to sue the company was inappropriate because Ms. Olson had previously agreed to check on whether Mr. Cook would be authorized to partake in the employee stock options. Ms. Olson also conferred with others who were present and believed that Mr. Cook also had some performance issues and that there were prior incidents of Mr. Cook making threatening statements.

The following morning Mr. Cook reported for work and turned in his signed non-disclosure agreement. When asked by Ms. Olson about his statement the preceding day, he said that in effect he was not aware that his comments had been heard or considered but did not intend them to be taken seriously.

Because Mr. Cook's statements had been considered inappropriate and disruptive and based upon Ms. Olson's belief that the claimant may have also had performance issues, a decision had been made to terminate the claimant from his employment with the company. Prior to his discharge the claimant had received no warnings or counselings from the employer and was unaware of any complaints about his work performance. Mr. Cook denies making any threatening statements and had not been warned by the employer for that or any other reason.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges the employee for reasons that constitute work-connected misconduct. See Iowa Code section 96.5-2-a. 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 propriety of a discharge is not the issue in an unemployment appeal. The employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct and culpability. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or the employee's duties and obligations to the employer. Inefficiency or ordinary negligence in isolated incidents or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. See 871 IAC 24.32(1)(a).

In the case at hand, Mr. Cook was discharged based upon the employer's interpretation of Mr. Cook's intent to not sign a non-disclosure agreement and to sue the company for discrimination if he were not given the stock options. During the meeting that had been held on the non-disclosure agreement and stock options, a number of points on the non-disclosure agreement had been controversial and openly discussed by employees and management. Mr. Cook believed that he was qualified to be a member of the stock option plan but his name was not on the authorized list. In an obviously weak effort at humor, the claimant made a statement about not signing the agreement and further intending to sue the company if he was not included in the stock option plan. Because the claimant was not laughing when he made the statement, claimant's threat to sue was taken seriously and considered inappropriate leading to the claimant's discharge based upon the employer's further belief that he had performance issues in his job.

The question before the administrative law judge is not whether the employer has a right to discharge the claimant for these reasons, but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Mr. Cook may have been a sound decision from a management viewpoint, the administrative law judge concludes based upon the evidence in the record that the claimant's conduct on July 12, 2016 was an isolated incident of poor judgment in an otherwise unblemished employment record. The claimant had not been warned or counseled by the employer for any reason prior to his discharge.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes the claimant was discharged under non disqualifying conditions. Accordingly, the claimant is qualified to receive unemployment insurance benefits, provided that he meets all other eligibility requirements of Iowa law. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation from employment and the evidence does not establish that the claimant acted deliberately in violation of company policy or procedure or prior warning, intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown.

DECISION:

The representative's decision dated August 8, 2016, reference 01, is affirmed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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