

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DAVID A OLSON
524 – 31ST ST
WEST DES MOINES IA 50265-3102

BAKER ELECTRIC INC
ATTN SUSAN PELUSE
111 SW JACKSON
DES MOINES IA 50315

Appeal Number: 06A-UI-06185-CT
OC: 04/02/06 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

David Olson filed an appeal from a representative's decision dated June 7, 2006, reference 01, which denied benefits based on his separation from Baker Electric, Inc. After due notice was issued, a hearing was held by telephone on July 6, 2006. Mr. Olson participated personally. The employer participated by Matt Pilcher, Field Superintendent.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Olson was employed by Baker Electric, Inc. from December 7, 2005 until May 16, 2006 as a full-time journeyman electrician. He was discharged

due to lack of production and because of his attitude. Mr. Olson was argumentative and often debated work assignments. In March of 2006, he received a written warning regarding his production and his attitude.

During the last one to two months of his employment, Mr. Olson worked on an apartment project in downtown Des Moines. The employer found that apprentice electricians were wiring two apartment units per day while Mr. Olson sometimes only did one unit per day. He had difficulty focusing on the job due to personal issues for which he was receiving psychological treatment during the prior six months. Mr. Olson was never advised that his continued employment was in jeopardy for any reason.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Olson was separated from employment for any disqualifying reason. 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). One of the reasons for Mr. Olson's discharge was that he was argumentative when given instructions. The fact that an individual is balky or argumentative is not sufficient to establish misconduct.

Mr. Olson was also discharged because of low production. Where an individual's failure is due to inability or incapacity, he is not guilty of misconduct. See Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979). Mr. Olson's low production was due to difficulty he had concentrating on the job. He was receiving medical care for the problem that was causing him to lose focus. He did not fail to meet the employer's standards on a daily basis. The administrative law judge concludes that, on those occasions when he failed to meet standards, Mr. Olson was prevented from doing so due to inability or incapacity. Therefore, his conduct was not volitional as is required for a misconduct disqualification.

Although Mr. Olson may have been an unsatisfactory employee, the evidence failed to establish that he deliberately and intentionally acted in a manner he knew to be contrary to the employer's standards or interests. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated June 7, 2006, reference 01, is hereby reversed. Mr. Olson was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs