

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CURTIS STRUTZENBERG
Claimant

APPEAL NO: 13A-UI-02550-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA FIRE CONTROL LLC
Employer

OC: 01-13-13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 21, 2013, reference 01, decision that denied benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 29, 2013. The claimant participated in the hearing. Ryan Smith, President, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time alarm and service technician for Iowa Fire Control from March 1, 2011 to January 14, 2013. The employer advanced the claimant 24 hours pay on his check after he had used all of his vacation and personal days in September 2012. The claimant agreed to repay the employer by working overtime until the time was made up. On Friday, January 11, 2013, the claimant called Vice-President/Owner Vaughn McQuillen and stated he should be earning time and one-half when he worked overtime to repay the pay advanced to him. Mr. McQuillen disagreed and told him the employer paid him 24 hours of regular pay and he was expected to repay the employer by making up those 24 hours and the only way he could do so was by working 24 hours of overtime. The claimant was disrespectful during the call, raised his voice and demanded to be paid at time and one-half. The claimant would not accept Mr. McQuillen's answer that he needed to repay the advance by working 24 hours and the claimant continued arguing with Mr. McQuillen before hanging up on him. President Ryan Smith talked to Mr. McQuillen and the claimant's supervisor, Jeremy Adams, and they discussed the issues the claimant had throughout his employment in working well with supervisors and co-workers. They talked about the fact that disagreements with the claimant soon escalated into shouting matches and the claimant was disrespectful. If the claimant disputed a decision made by management he became combative. The employer also received

numerous reports from customers that the claimant complained about his co-workers and supervisor. The claimant had been verbally warned about his attitude and actions but his behavior continued. The claimant's behavior was an on-going issue for the employer and when the claimant reported for work January 14, 2013, still arguing about the repayment of hours, the employer terminated the claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 advanced the claimant 24 hours of pay in September 2012 with the understanding the claimant would make up the hours. In order to make up the hours the claimant had to work overtime. The claimant was making up regular, not overtime hours, and while he had the right to advance the argument he should be paid at time and one-half for the overtime he was working to make up the hours, the employer disagreed with him. The claimant never asked the employer if he would be making up the hours at time and one-half when he asked for the advance and there was no reason for the employer to allow him to make up regular hours at time and one-half. When he called Mr. McQuillen to ask him about the situation he became loud, disrespectful and argumentative, repeating the pattern he demonstrated with management and co-workers throughout his employment whenever there was a disagreement,

before hanging up on Mr. McQuillen. The claimant testified they were disconnected because he was on a cell phone in a metal building but could not explain why, if he did not hang up on Mr. McQuillen, he failed to call him back, instead letting him think the claimant hung up on him. While the claimant testified the issue was resolved during the phone call, he reported for work Monday, January 14, 2013, with a piece of paper containing numbers in an attempt to further the argument. The claimant's behavior throughout his employment was disrespectful, inappropriate and unprofessional and continued despite being verbally warned about his conduct. The claimant's belligerence January 11, 2013, was the last straw for the employer. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The February 21, 2013, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs