

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS M HOWARD
Claimant

APPEAL NO. 09A-UI-16404-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VEH ENTERPRISES
Employer

OC: 10/04/09
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Dennis Howard filed an appeal from a representative's decision dated October 26, 2009, reference 01, which denied benefits based on his separation from VEH Enterprises. After due notice was issued, a hearing was held by telephone on December 7, 2009. Mr. Howard participated personally. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Howard 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. Howard began working for VEH Enterprises in October of 2006. He worked approximately 18 hours each week as a clerk in the dry cleaning and coin laundry business operated by the employer. He was discharged for being out of uniform on October 2, 2009.

On or about September 21, 2009, the employer gave notice that employees were to start wearing the winter uniform effective October 1. The winter uniform consists of dark slacks and a white button-down shirt. Employees are responsible for providing their own uniforms. Mr. Howard planned on getting the appropriate clothing but had not purchased it by October 1. Because he was not wearing the required uniform on October 2, he was discharged. In the past, the employer had usually allowed additional time for workers to get uniforms before imposing sanctions. The above matter was the only reason given Mr. Howard for his discharge.

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). Mr. Howard was discharged because he was not wearing the

appropriate attire October 2, 2009. Although he had been made aware of when the uniform would change, he relied on his past experience where the employer had allowed additional time for workers to start wearing the new uniforms.

This was not a case in which Mr. Howard was refusing to wear the required uniform. He simply had not purchased the appropriate clothing yet and had a good-faith belief that he had additional time in which to do so. In order to disqualify an individual from receiving job insurance benefits, the misconduct must be substantial. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The administrative law judge concludes that Mr. Howard's failure to be in uniform on one occasion did not constitute substantial misconduct. There was no willful or wanton disregard of the employer's standards. While the employer may have had good cause to discharge him, 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 App. 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated October 26, 2009, reference 01, is hereby reversed. Mr. Howard was discharged by VEH Enterprises but substantial misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs