

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOE C HOGG**  
Claimant

**APPEAL NO. 08A-UI-01049-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ARCH BUILDERS INC**  
Employer

**OC: 01/06/08 R: 03  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Arch Builders, Inc. filed an appeal from a representative's decision dated January 23, 2008, reference 01, which held that no disqualification would be imposed regarding Joe Hogg's separation from employment. After due notice was issued, a hearing was held by telephone on February 13, 2008. Mr. Hogg participated personally. The employer participated by Chris Phillip, President, and John Nurre, Foreman.

The hearing record was left open to allow Mr. Hogg an opportunity to submit telephone records concerning calls to the employer. He was to contact the administrative law judge by 4:30 p.m. on February 14 to indicate whether he would be able to obtain the records on his own or whether a subpoena would be necessary. He did not contact the administrative law judge until February 21, at which time he requested a subpoena for the telephone records. Inasmuch as he did not comply with the directions given by the administrative law judge, the decision was made that a subpoena would not be issued. He did not establish a good reason for not notifying the administrative law judge before February 21 that he would have a problem obtaining the records on his own. Because there will be no submission of documents for which the record was left open, the administrative law judge closed the record on February 21, 2008.

**ISSUE:**

At issue in this matter is whether Mr. Hogg was separated from employment for any disqualifying reason.

**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. Hogg was employed by Arch Builders, Inc. from June of 2006 until January 8, 2008. He worked full time as a framer and carpenter. On Sunday, January 6, both Mr. Hogg and a coworker, Sean, called the foreman regarding work for the next day. Both indicated that they did not want to work on January 7 because rain was in the forecast. The foreman advised both that there would be work on January 7.

Both Mr. Hogg and Sean called on January 7 to report that they would be absent. Mr. Hogg indicated he would be absent because his wife was ill. Their absences caused the employer to not have sufficient crew for the planned work. Because of the call to the foreman on January 6, the employer believed Mr. Hogg had falsified his reason for being absent on January 7 in order to have the day off. As a result of their absence, Mr. Hogg and Sean were both notified that they would be suspended without pay for one week.

After imposing the suspension, the employer learned that Mr. Hogg had contacted OSHA regarding the job site. Mr. Hogg was then discharged from the employment.

**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). The employer's stated reason for discharging Mr. Hogg was that he falsified his reason for being absent on January 7. Even assuming that he did give false information regarding the absence, the employer determined that a one-week suspension was the appropriate discipline for the conduct. Mr. Hogg was to be suspended rather than discharged in spite of his prior attendance record.

Mr. Hogg was discharged after the employer learned that he had called OSHA to complain. It was well within his right to make the contact if he had concerns about his work environment. The administrative law judge believes it would be contrary to public policy to hold that contacting OSHA constituted an act of misconduct. For the reasons cited herein, the administrative law judge concludes that Mr. Hogg's discharge was not prompted by an act of misconduct as that term is defined by law. Accordingly, benefits are allowed.

**DECISION:**

The representative's decision dated January 23, 2008, reference 01, is hereby affirmed. Mr. Hogg was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs