

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT JUAREZ
Claimant

APPEAL NO. 09A-UI-05424-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**JOHN DEERE CONSTRUCTION
EQUIPMENT COMPANY**
Employer

OC: 06/08/08
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Robert Juarez (claimant) appealed a representative's March 31, 2009 decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with John Deere (employer) for conduct not in the best interest of the employer. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate in the hearing.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 16, 1998, as a full-time assembler. The employer did not issue the claimant any warnings during his employment. On March 6, 2009, a supervisor from another department was riding on a scooter and drove as if he was going to hit the claimant. The claimant moved out of the way and told the supervisor that he did not think his behavior was appropriate. The claimant tried to take the scooter to a telephone to report the supervisor. The supervisor came at the claimant swinging his fists. The claimant backed away.

The claimant reported the event to his union steward. The employer suspended the claimant. On March 10, 2009, the employer terminated the claimant. The claimant believes he was terminated in retaliation for filing a lawsuit against the employer in 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 31, 2009 decision (reference 03) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css