

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEITH RANEY
Claimant

APPEAL NO. 07A-UI-03763-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ATTWOOD CONSTRUCTION INC
Employer

**OC: 03-11-07 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 2, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 26, 2007. The claimant participated in the hearing. Mike Attwood, Owner, 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 carpenter for Attwood Construction from May 2006 to January 10, 2007. The claimant was approximately 15 minutes late January 10, 2007, but did not call in to report he would be tardy. Consequently, the employer asked him why he was late and the claimant said he had a fight with his wife but did not apologize for being late and was not there to receive his assignment. Shortly thereafter the employer told the claimant to do a couple of tasks and the claimant stood around rather than complying with the directives. When he did begin to work on the house the employer questioned what he was doing and the claimant yelled down from the roof asking if the employer “had a problem” with him and the employer said, “You bet I do.” The parties then had a heated shouting match during which the employer stated he was the boss and they were going to do things his way and the claimant argued with him and used inappropriate, unprofessional and reprehensible language before the employer told him to leave. The claimant did not have any previous attendance problems and had not received any documented written or verbal warnings during his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the employer's decision to terminate the claimant's employment was understandable, the employer testified there were no previous attendance issues and the claimant never received any documented verbal or written warnings and consequently did not know his job was in jeopardy. Additionally, because there were no written or verbal warnings this was an isolated incident of misconduct and as such does not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The April 2, 2007, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css