

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN D CABRERA
Claimant

APPEAL NO. 11A-UI-08006-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PALMER & COMPANY
Employer

OC: 05/08/11
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Juan Cabrera, filed an appeal from a decision dated June 6, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 12, 2011. The claimant participated on his own behalf. The employer, Palmer and Company (Palmer), did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Juan Cabrera was employed by Palmer from May 2010 until May 12, 2011 as a full-time machine operator. In the fall of 2010 he had left work to take relatives back to Michigan and failed to return to work as scheduled because he had transportation problems.

On May 3, 2011, he was notified his aunt in Mexico was ill and his mother, who lived in Iowa with him, wanted to go visit her. He did not notify his employer the next day, May 4, 2011, which was his last day of work. Instead he waited until shortly before his shift was scheduled to start to notify Carissa, the human resources representative, he was going to be leaving town. He had no vacation he could use but Carissa did not expressly forbid him to go, although he indicated he would still have gone even if she had refused outright to approve the time off. Instead she told him they would discuss it when he returned.

When he returned to Iowa on May 12, 2011, he called Carissa who told him he had been discharged.

REASONING AND CONCLUSIONS OF LAW:

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 claimant took time off for personal business even though he had no vacation time available to him and did not give the employer adequate notice of his absences. But the employer does not appear to have given him any warnings for the prior unapproved leave nor did Carissa inform him he would be fired if he took the days off in May 2011, only that the matter would be discussed when he returned.

The claimant might very well have still gone on the personal business if he had been advised he would be fired if he left, but he was not given that specific option when he notified the employer he was leaving. He does not appear to have been advised his job was in jeopardy nor was he guilty of insubordination by leaving after being told he was not granted permission to do so.

The employer has failed to meet its burden of proof to establish the claimant was discharged for willful and deliberate misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of June 6, 2011, reference 01, is reversed. Juan Cabrera is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css