IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KYLE W SKORNIA
Claimant

LANG COMPANY INC
Employer

APPEAL NO. 07A-UI-00233-CT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/03/06 R: 03
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lang Company, Inc. filed an appeal from a representative's decision dated December 29, 2006, reference 02, which held that no disqualification would be imposed regarding Kyle Skornia's separation from employment. After due notice was issued, a hearing was held by telephone on January 24, 2007. Mr. Skornia participated personally. The employer participated by Pat Lang, President.

ISSUE:

At issue in this matter is whether Mr. Skornia 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. Skornia was employed by Lang Company, Inc. from August 15 until December 2, 2006 as a full-time laborer. He missed a number of days of work during the course of his employment. Some of the absences were for court appearances and were arranged with the supervisor.

The employer recorded a number of "no show/no call" absences on Mr. Skornia's record. The dates were November 6, November 8 through 11, and November 29 through December 1. In spite of being absent the entire week beginning November 6, he was allowed to return to work and no disciplinary action was taken. In spite of him being absent without notice from November 29 through December 1, he was allowed to work on December 2. Approximately two days before his last day of work, Mr. Skornia was advised to file for unemployment. He assumed that meant he was on layoff and would be called when needed to work. Therefore, he did not report for work after December 2. He filed a claim for job insurance benefits effective December 3, 2006. He was at the workplace on or about December 8 to get his paycheck but was not asked why he had not been at work. He has not been called for work since December 2, 2006.

REASONING AND CONCLUSIONS OF LAW:

A threshold decision is whether Mr. Skornia's separation should be characterized as a quit, a discharge, or a layoff. He did not tell anyone that he was quitting and was not told he was discharged. He last worked on December 2 after having been advised to file for unemployment benefits. Given this direction, it was reasonable for him to assume that he was laid off due to lack of work and would be called when needed. However, others worked after December 2, but Mr. Skornia was not called for work after that date. The administrative law judge concludes that he was not called because the employer no longer wanted to employ him. For the above reasons, the administrative law judge concludes that the employer initiated the separation from employment. Therefore, it is considered a discharge.

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). It appears that Mr. Skornia was discharged because of his attendance. There is no doubt but that he had an unsatisfactory attendance history. However, the employer acquiesced to his poor attendance by allowing him to continue working without taking any disciplinary action. It is the responsibility of the employer to notify an individual that he is engaging in unacceptable behavior and might be discharged if it persists. Since the employer never made an issue of his attendance, it was reasonable for Mr. Skornia to assume that the employer did not have a problem with his absences, including the failure to report them.

Ordinarily, an individual should know that he is to let the employer know when he is not going to be at work. However, when an individual has a history of unreported absences without consequences, he has no reason to believe the employer expects different behavior. Because the employer did not put Mr. Skornia on notice that his actions were unacceptable, he was denied the opportunity to make those changes that might have prevented his separation from the employment. The administrative law judge appreciates that the employer did not have the time to devote to some elaborate system of discipline and record-keeping. However, Mr. Skornia's foreman was aware of his attendance lapses. The employer certainly had the time at some point to meet with Mr. Skornia and advise him that he was in danger of losing his job.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Mr. Skornia was not discharged for misconduct. While the employer may have had good cause to discharge, 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 1983). Benefits are allowed.

DECISION:

The representative's decision dated December 29, 2006, reference 02, is hereby affirmed. Mr. Skornia was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

_____
Carolyn F. Coleman
Administrative Law Judge

_____
Decision Dated and Mailed

cfc/pjs