

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN J CHAPMAN
Claimant

APPEAL NO. 08A-UI-02067-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMC ACQUISITIONS INC
Employer

**OC: 01/20/08 R: 04
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Steven Chapman filed an appeal from a representative's decision dated February 21, 2008, reference 01, which denied benefits based on his separation from Energy Manufacturing Company (EMC). After due notice was issued, a hearing was held by telephone on March 20, 2008. Mr. Chapman participated personally and Exhibits A, B, and C were admitted on his behalf. The employer participated by Walt Puccio, Human Resources Manager; Steven Aldrich, Material Handler; and Brian Meyer, Supervisor. Exhibits One through Five were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Chapman 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. Chapman was employed by EMC from June 24, 1986 until January 21, 2008. He was last employed full time as a stock room clerk. He was discharged for being insubordinate towards a supervisor, Brian Meyer, on January 16, 2008.

On January 16, Mr. Meyer was assisting Steven Aldrich move a load of rods to Mr. Chapman's area. Mr. Chapman did not like where they placed the rods and stated they were "fucking idiots." When Mr. Meyer asked him what he had said, Mr. Chapman repeated "fucking idiots." Mr. Meyer told him to go home, but Mr. Chapman refused because he believed a union representative had to be present before he could be sent home.

On January 16, Mr. Chapman was notified that he was being suspended for two-and-a-half days without pay. The written notice of suspension cited the fact that Mr. Chapman had engaged in an angry verbal confrontation with a supervisor that involved the use of foul language. The notice went on to state that the suspension was being taken as a result of his actions. It also stated that an investigation would take place to verify the situation. Lastly, the written notice advised Mr. Chapman that further violations of the employer's policies could result in further disciplinary action, up to and including immediate discharge.

Pursuant to the notice of suspension, Mr. Chapman returned to work on January 21. He was notified of his discharge the same day. The above incident was the sole reason for the separation.

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). In the case at hand, it was alleged that Mr. Chapman was discharged for insubordination in that he directed profanity towards a supervisor on January 16, 2008. The issue arises as to whether the discharge represented additional disciplinary action for the same offense.

Mr. Chapman was notified in writing on January 16 that he was being suspended. The suspension was clearly not for the purpose of investigating the matter and making a determination as to what disciplinary action to take. This conclusion is based on the language used in the written notice given to Mr. Chapman. The suspension notice identified the conduct complained of and indicated that the suspension was a result of that conduct. The notice indicated that an investigation would be conducted to "verify" the situation. It did not indicate that the investigation was to determine what the facts were but was to "verify" them. The notice goes on to advise Mr. Chapman as to what would occur if there were future violations. If he were being suspended pending an investigation, there would seemingly be no need to advise him at that time of the consequences of future conduct.

Because the suspension of January 16 was to discipline rather than investigate, the administrative law judge concludes that Mr. Chapman had already been disciplined for his actions of January 16. There were no intervening acts of misconduct between the time of the suspension and the discharge. Inasmuch as he had already been disciplined for the conduct of January 16, the administrative law judge concludes that the discharge of January 21 was not predicated on a current act of 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). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated February 21, 2008, reference 01, is hereby reversed. Mr. Chapman was discharged but a current act of 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/kjw