

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JON B SHIELD
Claimant

APPEAL NO. 07A-UI-02570-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN Q HAMMONS
HOTELS MANAGEMENT
Employer

OC: 02/04/07 R: 02
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Jon Shield, filed an appeal from a decision dated March 9, 2007, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 29, 2007. The claimant participated on his own behalf. The employer, John Q. Hammons Hotels Management (Hammons), participated by Human Resources Manager Sarah Brown.

ISSUE:

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

FINDINGS OF FACT:

Jon Shield was employed by Hammon from August 25, 2005 until January 29, 2007, as a full-time prep cook. On January 27, 2007, he left a note on the desk of Executive Chef Ray Trom, stating he thought his paychecks had been shorted over the past three months. When Mr. Trom arrived he talked to the claimant and said he would check into it.

After that the employer alleged that the claimant became hostile, verbally abusive, and profane to Mr. Trom and Sous Chef Eric Bills, accusing them of being racist, threatening them, and after being told to go home, threw his chefs hat and coat at Mr. Trom. The claimant denied any hostile actions or inappropriate language or conduct, admitting only to telling his supervisor that he was going to file a complaint about him being “prejudiced.”

The claimant was called to the office of Human Resources Manager Sarah Brown on January 29, 2007, when she read to him the statements written by Mr. Bill and Mr. Trom

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the employer failed to present any firsthand, eyewitness testimony from the individuals who alleged the claimant had been verbally abusive and threatening, and did not present to the judge any written statements for examination, only read what the statements were reported to have said. Both of the witnesses are still employed by Hammons, but the employer did not elect to have them participate. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer's hearsay testimony carries insufficient evidentiary weight to rebut the claimant's denial of wrongdoing. It has failed to meet its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of March 9, 2007, reference 03, is reversed. Jon Shield is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw