

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARON P VERWERS
Claimant

APPEAL NO. 11O-UI-07574-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WORKSOURCE INC
Employer

OC: 12/26/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated January 25, 2011, reference 02, which denied unemployment insurance benefits. A hearing was held on March 24, 2011. The claimant did not participate. An administrative law judge decision was issued on March 25, 2011, confirming the fact-finder's decision. Mr. Verwers appealed to the Employment Appeal Board and the matter was remanded for a new hearing. A telephone hearing was scheduled for and held on July 19, 2011. The claimant participated personally. The employer participated by Ms. Nancy Parli, branch manager.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Aaron Verwers was employed by Worksource, Inc. from September 13, 2010, until November 5, 2010, when his most recent work assignment ended. Mr. Verwers was assigned to work at EP2 performing electrical wiring for the client employer. Mr. Verwers was paid by the hour. His immediate supervisor was Lucy Slippin.

Mr. Verwers' assignment at EP2 came to an end on November 5, 2010, when he was told by his immediate supervisor at the client employer that his services were no longer needed. Mr. Verwers had worked on November 3, 2010, but had requested permission from his immediate supervisor at the client employer to be absent on the following date, November 4, 2010. Mr. Verwers needed to make repairs on his vehicle and obtained permission from his supervisor to be absent. On November 5, 2010, Mr. Verwers contacted his immediate supervisor at the client location to indicate that he would be reporting for scheduled work as expected and at that time was told that his services were no longer needed, as the company was expecting a slowdown in production. In spite of the claimant's protestations, his assignment came to an end at that time. Mr. Verwers notified Worksource, Inc. that the assignment had ended.

It is the employer's position that their company records indicate that the claimant had quit his job.

REASONING AND CONCLUSIONS OF LAW:

In this matter, the testimony is disputed. Mr. Verwers participated personally and provided sworn, firsthand testimony denying quitting his job and testifying that he was separated from his assignment at the client employer after being given permission to be absent on November 4, 2011. In contrast, the evidence in the support of the employer is hearsay in nature. Although hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony. The administrative law judge finds the claimant's testimony to be credible and not inherently improbable.

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 in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer fails to furnish sufficient evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this matter, the claimant was separated from employment after he had been given permission to be absent by the client employer. The administrative law judge concludes that the claimant's separation from employment took place for no disqualifying reason.

Although there may be an issue regarding Mr. Verwers' subsequent refusal of work offers, the claimant's separation from employment that took place on November 25, 2010, took place under non-disqualifying conditions. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated January 25, 2011, reference 02, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw