

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA E ROBBINS
Claimant

APPEAL NO. 10A-UI-13942-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STATEWIDE CONTRACTING INC
Employer

OC: 06/13/10
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Joshua Robbins, filed an appeal from a decision dated October 4, 2010, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 22, 2010. The claimant participated on his own behalf. The employer, Statewide Contracting, participated by President Brad Carlson.

ISSUE:

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

FINDINGS OF FACT:

Joshua Robbins was employed by Statewide Contracting from June 14 until August 31, 2010, as a part-time laborer. Late at night on August 31, 2010, the claimant and President Brad Carlson became involved in an acrimonious exchange of text messages regarding the work the claimant and his co-worker, Ben, had done that day. Profane language was used by both as the exchange escalated. It ended with the employer telling the claimant, "you're through."

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 testimony as to the actual exchange of message is somewhat murky. But the claimant appeared to be reading directly from the saved text messages on his cell phone and had more clarity and precision than the evidence the employer could provide. As such the administrative law judge concludes the claimant was discharged when the employer texted, "you're through." The employer has failed to provide any evidence of misconduct and has therefore not met its burden of proof to establish the discharge was for substantial, job-related misconduct. Disqualification may not be imposed.

DECISION:

The representative's decision of October 4, 2010, reference 03, is reversed. Joshua Robbins is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs