

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MILADIN JOVIC
Claimant

APPEAL NO. 07A-UI-04705-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAY TRANSPORTATION INC
Employer

OC: 05/28/06 R: 03
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Gray Transportation, Inc. filed an appeal from a representative's decision dated May 3, 2007, reference 05, which held that no disqualification would be imposed regarding Miladin Jovic's separation from employment. After due notice was issued, a hearing was held by telephone on May 24, 2007. Mr. Jovic participated personally. The employer participated by Margo Campbell, Maintenance Supervisor. Dina Civsa participated as the interpreter.

ISSUE:

At issue in this matter is whether Mr. Jovic 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. Jovic was employed by Gray Transportation, Inc. from August 1, 2006 until April 16, 2007. He worked full time cleaning trucks. He was discharged for using the incorrect cleaning products. A green, oil-based solution is to be used on vinyl surfaces and a blue solution is to be used on glass surfaces. Mr. Jovic often used the green solution on glass surfaces, such as windshields, causing streaks that could obscure vision. The employer tried labeling the various bottles but that did not eliminate the problem.

Mr. Jovic is Bosnian and does not have command of the English language. The employer utilized another Bosnian employee to translate instructions to Mr. Jovic. This individual did not perform the same job as Mr. Jovic. Because he repeatedly used the wrong cleaning products, Mr. Jovic was notified, through the coworker, that he was discharged. He was notified of the discharge on April 15 but still reported to work on April 16.

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). Mr. Jovic was discharged because he repeatedly used the wrong product to clean glass surfaces. Because of the language barrier, it appears that he may not have understood what was expected of him. It does not appear that his Bosnia coworker was adept at translating information to Mr. Jovic. This is seen in the fact that the coworker translated the discharge to Mr. Jovic on April 15 but he returned to work on April 16. This factor suggests to the administrative law judge that information was being lost in translation. Mr. Jovic did not appreciate that he was acting in a manner that was contrary to the employer's standards or interests.

The administrative law judge cannot conclude that Mr. Jovic deliberately and intentionally used the incorrect cleaning product in spite of the fact that he knew better. Given the language barrier, any doubt as to whether he understood the instructions given him will be resolved in his favor. 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 the administrative law judge concludes that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated May 3, 2007, reference 05, is hereby affirmed. Mr. Jovic 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/css