

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HUSEIN ODOBASIC

Claimant

APPEAL NO. 14A-UI-07758-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASTERBRAND CABINETS INC

Employer

OC: 12/29/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Husein Odobasic (claimant) appealed a representative's July 21, 2014, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Masterbrand Cabinets (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 20, 2014. The claimant was represented by Adnan Mahmutagic, Attorney at Law, and participated personally. The employer participated by Kyle Roed, Human Resources Manager, and Jodi Schaefer, Human Resources Generalist. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 12, 1998, as a full-time material handler. The claimant signed for receipt of the employer's handbook. The claimant suffered a work related back injury on February 3, 2014. His physician restricted him to lifting no more than fifteen pounds and pushing no more than twenty pounds. The claimant was not improving and the workers' compensation carrier obtained some video surveillance of the claimant on two days. On May 30, 2014, the claimant was carrying a porcelain sink with faucets attached. The claimant walked with no impairment. On June 7, 2014, the claimant jumped down out of the back of his truck. He tossed packets of shingles and tar paper into the land fill. He also pushed a wood-filled entry door with a glass window into the land fill. The claimant walked with no impairment.

On June 11, 2014, the claimant went to his physician complaining his back was no better and asked for more painkillers. The physician could find no reason why the claimant was not healing. On June 25, 2014, the employer met with the claimant and asked about his activities. The claimant acknowledged he knew his restrictions. He told the employer he was not working on any projects during his vacation and did not even play basketball with his daughter because

his back hurt so much. The employer terminated the claimant on June 27, 2014, for failure to follow the doctor's restrictions and being untruthful during the meeting on June 25, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. He intentionally engaged in activities outside the scope of his restrictions and was dishonest with the employer on June 25, 2014. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's July 21, 2014, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css