

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON E SEDLACEK
Claimant

APPEAL NO. 13A-UI-07827-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BERTCH CABINET MFG INC
Employer

OC: 06/02/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated June 20, 2013, reference 01, which held claimant ineligible to receive benefits. After due notice was provided, a telephone hearing was held on August 22, 2013. The claimant participated. The employer participated by Ms. Mitzi Tann, Human Resource Director, and Mr. Tracy Bertch, Plant Manager. Employer's Exhibits A, B, C, D, E, and F were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Jason Sedlacek was employed by Bertch Cabinet Manufacturing, Inc. from January 14, 2013 until June 4, 2013 when he was discharged from employment. Mr. Sedlacek was employed as a full-time finish apprentice worker and was paid by the hour. His immediate supervisor was Cory Benston.

On June 3, 2013, the claimant was warned about wandering outside his work area and spending time socializing or giving work directives to other associates. The claimant had also been warned about these issues in April 2013. After the warning, the claimant did not return to his work area but instead proceeded to a different area of the production line where he stated, "You had better watch your back" to Colt VanSlyke, another worker. Mr. VanSlyke at the time was training a new employee but responded to the claimant's statement by asking, "Are you threatening me?" Claimant responded that it was not a threat but a "promise." It appears that Mr. Sedlacek believed that Mr. VanSlyke had complained about the claimant's habit of visiting with other workers.

The matter was reported to company management and the company investigated. Statements were taken from both the other employees involved in the incident. Based upon the claimant's statement and his demeanor, both of the other employees as well as the employer considered Mr. Sedlacek's statements to be a threat in violation of the company policy to maintain a

working environment free of any type of harassment or intimidation. Because the claimant had been previously warned about the matter that he associated with other workers on April 5, 2013 and that day, a decision was made to terminate Mr. Sedlacek from his employment.

Mr. Sedlacek maintains that he went over to visit with Mr. Van Slyke about previous text conversation and did so in conjunction with performing work in the area. Claimant denies making any threatening statements.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 insurance benefits. Conduct serious enough to warrant discharge may not necessarily be serious enough to warrant a 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 Ct. of Appeals 1992).

The evidence in the record establishes that Mr. Sedlacek was discharged after he violated company policy and warnings that had been served upon him by going to another employee's work area and making a threatening statement to the other employee. The claimant's statements served not only to intimidate the other worker but also intimidated a new hire who was being trained at that work location at the time. Mr. Sedlacek had been warned by his employer for a variety of reasons during the short period of his employment and had been specifically warned on April 5, 2013 about the manner that he was interacting with other employees. Although the claimant was reminded on June 3, 2013 about visiting or his amount of interacting with other employees, the claimant nevertheless disregarded that warning and violated it by going to a different work area and issuing a statement that was reasonably construed by both other employees as threatening.

Although Mr. Sedlacek maintains that the employer's account of the incident is not accurate, the administrative law judge notes that both the other employee and the new hire corroborated that the claimant had made a threatening statement and that the claimant was in the other employee's work area for no business-related purpose. The administrative law judge thus concludes the claimant was discharged under disqualifying conditions.

DECISION:

The representative's decision dated June 20, 2013, reference 01, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs