

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEE G MCLEMORE JR
Claimant

APPEAL NO. 11A-UI-05839-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC
Employer

OC: 01/16/11
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lee McLemore filed an appeal from a representative's decision dated April 27, 2011, reference 01, which denied benefits based on his separation from Labor Ready Midwest, Inc. After due notice was issued, a hearing was held by telephone on May 26, 2011. Mr. McLemore participated personally. The employer participated by Jessica Slaats, Customer Service Representative.

ISSUE:

At issue in this matter is whether Mr. McLemore was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. McLemore began working through Labor Ready Midwest, Inc. on October 11, 2010. The employer provides short-term, day labor work. He was discharged on January 23, 2011 due to repeated incidents of inappropriate behavior.

On or about December 11, 2010, Mr. McLemore had a dispute regarding the amount he received as fees for transporting other workers to the job site. The representative he was speaking with was not aware of what he had been told regarding such fees and, therefore, placed a call to Jessica Slaats, the individual Mr. McLemore said had given him the information. During the exchange, he became loud and belligerent. As a result, he received a warning on December 11. On December 15, he was being given a warning for leaving the job site early. He felt he had permission to leave and, therefore, disputed the warning. He became loud and belligerent, tore up the warning, and left. He was again warned about creating a scene.

The decision to discharge Mr. McLemore was due to his conduct on January 23, 2011. He was being given a warning for urinating outside on January 21. He disagreed with the warning because he felt he should have been allowed to use the restroom inside the Labor Ready offices rather than having to travel over two blocks to a public restroom. When he became loud

and argumentative when given the warning, he was asked to leave. He was asked to leave several times but refused to do so until the police were called. He left before the police arrived.

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 § 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. McLemore was discharged for repeatedly losing his temper and becoming loud and belligerent in the employer's offices. He was not discharged because of the conduct that brought about his warnings but for his response to being warned or when he had disputes on work-related matters.

Mr. McLemore had received two warnings in December about his outbursts in the office. In spite of the prior warnings, he was again yelling and being belligerent on January 23. He was not discharged for urinating outside. He may well have had a legitimate dispute regarding the warning of January 23. However, the manner in which he went about disputing it was inappropriate and was the basis for the decision to discharge. His conduct and demeanor during the hearing on May 26 gives credibility to the employer's contention that he repeatedly engaged in inappropriate outbursts at the office. Moreover, he was insubordinate in refusing to leave the office when directed on January 23. Although he did leave, it was only after the police had to be called.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. The employer had the right to expect employees to act in a civil manner even when disagreeing with the employer. If an individual disagrees with disciplinary action, the appropriate step is to take the matter up the chain of command for resolution. For the reasons stated herein, benefits are denied.

DECISION:

The representative's decision dated April 27, 2011, reference 01, is hereby affirmed. Mr. McLemore was discharged for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs