

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUSSELL J WILEY
Claimant

APPEAL NO. 06A-UI-09618-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST BUSINESS SOLUTIONS
Employer

**OC: 07/30/06 R: 02
Claimant: Respondent (1)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Midwest Business Solutions filed a timely appeal from the September 20, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 26, 2006. Claimant Russell Wiley participated. Owner Randy Forburger represented the employer and presented additional testimony through Administrative Assistant Rhonda Housken and Head Service Technician Darryl Frey. The administrative law judge took official notice of Agency administrative records regarding benefits disbursed to the claimant.

ISSUE:

Whether Mr. Wiley was discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance benefits. He was not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Russell Wiley was employed by Midwest Business Solutions as a full-time service technician from May 1, 2006 until August 4, 2006, when owner Randy Forburger discharged him.

The final incident that prompted the discharge occurred on August 4. On that date, Mr. Forburger called a meeting with Mr. Wiley, Administrative Assistant Rhonda Housken and Head Service Technician Darryl Frey to discuss Mr. Wiley's upcoming trip to Chicago for work-related training and to address confusion that had arisen regarding whether and to what extent Mr. Wiley would be compensated for his travel time. The employer ordinarily paid employees for their travel time when they traveled from Des Moines to work-related training. Mr. Wiley's role as a non-custodial parent introduced another variable into the travel arrangements. Mr. Wiley had hoped to coordinate the trip to Chicago with transporting his children back to their home in Ohio after extended visitation in Iowa. To do this, Mr. Wiley would have to travel to Ohio on the weekend before the Chicago training and then travel from Ohio to Chicago for the training. The distance from Ohio to Chicago was significantly longer than the distance from Des Moines to Chicago. Even though Mr. Wiley would be driving from Ohio, he hoped the employer would still pay him for the amount of travel time he would have incurred if he had driven from Des Moines. Mr. Wiley had discussed his travel plans with

Mr. Forburger two weeks prior to the August 4 meeting and thought he had an agreement with the employer whereby he would be paid for a portion of his travel time and take the balance of the travel time as personal time off. Mr. Forburger had intended no such agreement.

On August 3, Ms. Housken provided Mr. Wiley with a time-request form. Mr. Wiley completed the form pursuant to the agreement he thought he had with Mr. Forburger. The form was then forwarded to Mr. Forburger for final approval. Mr. Forburger reviewed the form and then met with Mr. Wiley. At that time, Mr. Wiley indicated that he completed the form based on his understanding of the agreement. Mr. Wiley further indicated that he had discussed the matter with his immediate supervisor, Head Service Technician Darryl Frey. These were the circumstances that led to the meeting on the morning of August 4.

At the August 4 meeting, Mr. Wiley expressed frustration with the employer's decision not to compensate him for his travel time. Mr. Wiley and Mr. Forburger both used stories from their prior employers to support their positions on the travel time compensation issue. Mr. Forburger indicated that he would resolve the controversy by cancelling the Chicago training and rescheduling it at a later date. Mr. Wiley accused Mr. Forburger of only caring about his own pocketbook and soon amended the charge to Mr. Forburger only caring about his pocketbook and his customers. Mr. Forburger responded to the accusation and explained why he did not believe it was accurate. The discussion then turned to other topics. One such topic concerned the designated smoking area. Mr. Wiley had received changing and mixed instructions regarding where he could smoke and at one point received a scolding from Mr. Forburger as a result. During the August 4 meeting, Mr. Wiley accused Mr. Forburger of disliking smokers. Mr. Forburger provided at least a limited explanation of the reasoning behind the employer's smoking policy. Another topic of the meeting was the employer's policy that employees were responsible for damage to equipment assigned to them, including notebook computers. Mr. Wiley had signed such an agreement during his orientation. During the August 4 meeting, Mr. Wiley asserted that it was inappropriate for the employer to assign such responsibility to employees rather than carry related insurance.

Toward the end of the discussion on August 4, Mr. Forburger asked Mr. Wiley questions to gauge his level of commitment and/or loyalty to the employer and the employment. Mr. Forburger asked Mr. Wiley what his intentions were with regard to the employment. Mr. Wiley indicated that he intended to continue to report to work. Mr. Wiley asked Mr. Forburger why he was being asked the question and whether the employer intended to discharge him from the employment. Mr. Forburger indicated that he believed it had come to that point. Mr. Forburger then advised Mr. Wiley that he was discharged from the employment.

Mr. Wiley had not previously been reprimanded in the course of the employment, had reported to work and performed his duties as directed, and had not refused to follow a directive. During the August 4 meeting, no one used profanity and no one yelled.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Wiley was discharged for misconduct in connection with the employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment 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. App. 1992).

The evidence in the record establishes that Mr. Wiley exercised poor judgment and a lack of self-control during his attempt to secure compensation for the time he would spend traveling to Chicago. At the same time, Mr. Forburger exercised poor judgment and lack of self-control in the course of responding to his employee's concerns regarding being paid for travel time. Both gentlemen allowed what should have been a civil discussion on a limited issue to spiral into something more and wholly missed the opportunity to better understand the other's perspective and nurture the new employment relationship. Although Mr. Wiley exercised poor judgment in using the August 4 discussion as an opportunity to unburden himself of various complaints he had about the employment, and although the employer was within its discretion to end the

employment, Mr. Wiley's conduct did not constitute misconduct as defined by the applicable rule. See 871 IAC 24.32(1)(a).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Wiley was discharged for no disqualifying reason. Accordingly, Mr. Wiley is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Wiley.

DECISION:

The Agency representative's September 20, 2006, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/cs