

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER ROUNDTREE
Claimant

APPEAL NO. 09A-UI-08127-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOC SERVICES LLC
Employer

OC: 04/12/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Christopher Roundtree filed a timely appeal from a representative's decision dated June 3, 2009, reference 03, that denied benefits based upon his separation from IOC Services, LLC. After due notice, a telephone conference hearing was scheduled for and held on June 22, 2009. Mr. Roundtree participated personally. The employer's witness, John Stanford, was not available at the telephone number provided.

ISSUE:

At issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record finds: The claimant was employed as a full-time maintenance technician for this employer from August 2008 until November 9, 2008, when he was discharged for excessive absenteeism.

At the time of hire, Mr. Roundtree specifically informed the employer that it was necessary for the claimant to return to the state of Mississippi in late October or early November 2008 to attend court proceedings. The claimant received the specific permission of the employer to be absent for this purpose. Prior to leaving on the authorized time away from work, the claimant had been late in reporting to work on two occasions and had been warned about his punctuality. The claimant reminded his immediate supervisor that he had been given permission to be gone from work to attend the court proceedings in Mississippi and his supervisor once again verified that the time would be authorized. Upon the claimant's return on the date expected, he immediately reported to work. The claimant was not absent or tardy thereafter, but nonetheless was discharged on November 9, 2008. Although the claimant requested the reason for his termination, the employer would not provide one.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing disqualifying misconduct sufficient to warrant a denial of unemployment insurance benefits.

The employer has the burden of proof in this matter. See Iowa Code section 96.62. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant a discharge of an employee is not necessarily serious enough to warrant the 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, 49 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in a disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiency in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In this case, the claimant appeared personally and provided sworn testimony, denying that he had been excessively absent following his warning. The claimant testified that he had been given an advance permission at the time of hire to be away from work for a limited time to attend court proceedings in another state. The claimant further testified that he verified that the time off was authorized with his immediate supervisor and that the claimant returned to work immediately upon completing his court responsibilities in the state of Mississippi. Claimant further testified that he had not been absent or tardy since returning, but nonetheless was discharged by the employer.

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.

For the reasons stated herein, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing disqualifying misconduct at the time of separation. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

Representative's decision dated June 3, 2009, reference 03, is reversed. Claimant was dismissed under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

srs/css