

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ESSIE C DONELSON
Claimant

APPEAL NO. 12A-UI-11702-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLAGGER PROS USA
Employer

**OC: 11/13/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Essie Donelson filed a timely appeal from a representative's decision dated September 18, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 25, 2012. The claimant participated. Participating as a witness for the employer was Victoria Benson, executive assistant/trainer.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Mr. Essie Donelson was most recently employed by Flagger Pros USA from April 6, 2012, until August 24, 2012, when he was discharged from employment. Mr. Donelson was employed as a full-time construction flagger and was paid by the hour. His immediate supervisor was Curt Palmer.

Mr. Donelson was discharged when he violated company policy by directly contacting a client to determine whether Flagger Pros was paying him the correct amount. Mr. Donelson believed that he should be eligible for a higher rate of pay because the project was governed by federal pay rules.

Mr. Donelson initially contacted Flagger Pros' office and displayed an angry demeanor, yelled at employees, and used inappropriate language. When Mr. Donelson believed he had received sufficient information from his employer, he contacted the company's client and once again displayed an argumentative and angry demeanor, hanging up on one occasion on the client. Mr. Donelson's conduct caused the client to immediately complain to Flagger Pros about Mr. Donelson's conduct. Based upon Mr. Donelson's conduct and demeanor in his call to the company that day, as well as his inappropriate demeanor and violation of policy by directly contacting the client, a decision was made to terminate Mr. Donelson from his employment.

It is the claimant's position that he had a legitimate question regarding pay and had not received a sufficient answer from Flagger Pros and that he therefore directly contacted the client about the matter. Although Mr. Donelson denies being angry or using inappropriate language, it was the claimant's testimony that he intended to contact the company in order to apologize for his conduct.

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 establishing disqualifying job misconduct. See Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. 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 App. 1992).

In the case at hand, the evidence in the record establishes that Mr. Donelson was discharged after he acted inappropriately on August 24, 2012, by displaying an angry demeanor and using

inappropriate language when calling the company offices for pay information and by violating a known company rule by directly contacting a client in an angry manner for the same reason. The claimant's conduct caused complaints by company employees as well as a direct complaint by company management from the client, who specifically complained about Mr. Donelson's conduct, his demeanor, and his violation of policy by directly contacting the client instead of his employer, Flagger Pros USA. Although the administrative law judge is aware that Mr. Donelson denies acting appropriately, the administrative law judge finds the weight of evidence to be established in favor of the employer, based upon the testimony of Ms. Benson, who was present at the time that the call was made to the company offices and the complaint made by the client regarding Mr. Donelson's actions and demeanor.

The administrative law judge finds the claimant's conduct to be in willful disregard of the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated September 18, 2012, reference 01, is affirmed. The 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, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw