

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LANCE W ARMEL**  
Claimant

**APPEAL NO. 07A-UI-02190-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CK CONSTRUCTION**  
Employer

**OC: 09/24/06 R: 02  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

CK Construction filed an appeal from a representative's decision dated February 22, 2007, reference 01, which held that no disqualification would be imposed regarding Lance Armel's separation from employment. After due notice was issued, a hearing was held by telephone on March 20, 2007. Mr. Armel participated personally. The employer participated by Carl Bannick, Owner, and Mike Hesselman, Foreman.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Armel's last period of employment with CK Construction began in October of 2005. He was employed full-time as a framer. On January 31, 2007, he made two errors, one was cutting two of the same joist and the other was cutting a garage header too short. The foreman, Mike Hesselman told him to "get the fuck out of here." Mr. Armel was not told he was only being sent home for the day or that he should return at some future point. He left work as directed on January 31.

On the afternoon of February 1, Mr. Armel spoke to the employer in an effort to get his job back. He was told he could return to work as a laborer at \$10.00 per hour. He had been earning \$14.00 per hour as a framer. Mr. Armel declined the offer. The employer felt the demotion was merited because of Mr. Armel's poor job performance. The employer felt he had to constantly be retrained to perform tasks he had performed satisfactorily in the past. The employer did not feel he learned from his past mistakes. Mr. Armel had been told that he would need to improve his performance or changes would have to be made. He was not told what those changes would be.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that Mr. Armel was discharged when his foreman directed him to leave the job site on January 31. Because the foreman did not in any way indicate that he was only being sent home for the day, it was reasonable to assume that “get the fuck out of here” meant he was discharged. The fact that Mr. Armel declined to return to work in a different capacity at a different rate of pay on February 1 does not alter the fact that he was discharged on January 31.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 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. Armel was discharged because of errors in the performance of his job. The administrative law judge does not doubt that he made errors on the job. However, the employer’s evidence failed to establish that his negligence was so recurrent as to manifest a substantial disregard of the employer’s interests and standards. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

**DECISION:**

The representative’s decision dated February 22, 2007, reference 01, is hereby affirmed as to result. Mr. Armel was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/css