

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BENJAMIN DRURY**  
Claimant

**APPEAL NO. 08A-UI-01197-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TIMTEC INC/LESLIE ELECTRIC**  
Employer

**OC: 01/06/08 R: 04  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Benjamin Drury (claimant) appealed an unemployment insurance decision dated January 28, 2008, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from TimTec, Inc. (employer), doing business as Leslie Electric, for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 20, 2008. The claimant participated in the hearing with Attorney John Frey Jr. The employer participated through owner Donald Timmermann. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on September 30, 1996, as a full-time apprentice and was most recently working as an estimator when he was discharged on January 10, 2008. The employer said the claimant was terminated for having a bad attitude, however, no disciplinary warnings were issued. The claimant was negotiating with the owner to buy its business, but the parties could not agree to terms. The employer said the claimant threatened that if the employer did not sell the company, the claimant would go out and form his own company and hire all the employees so the employer would have nothing left. The claimant denies making any threat.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was discharged for having a bad attitude. The Courts have said it is not sufficient for the employer to show that it was unhappy with the way an employee performed the job. Kelly v. Iowa Department of Job Service, 386 N.W.2d 552 (Iowa App. 1986). Likewise, the employer cannot meet its burden to establish disqualifying misconduct when discharging an employee for having a bad attitude, particularly when no disciplinary warnings have been issued to that employee. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

**DECISION:**

The unemployment insurance decision dated January 28, 2008, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw