

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KYLE R WOODRUFF**  
Claimant

**APPEAL NO. 11A-UI-15626-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 01/09/11  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Express Services, filed an appeal from a decision dated November 28, 2011, reference 02. The decision allowed benefits to the claimant, Kyle Woodruff. After due notice was issued a hearing was held by telephone conference call on January 9, 2012. The claimant participated on his own behalf. The employer participated by Director of Operations Erin Platts.

**ISSUE:**

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

**FINDINGS OF FACT:**

Kyle Woodruff was employed by Express Services from June 20, 2011 until October 25, 2011. His last assignment was at Rain and Hail Insurance beginning July 12, 2011. That assignment ended because the claimant had been no-call/no-show to work for two days. Director of Operations Erin Platts notified him by phone.

The employer maintained the claimant had been fired by her because he called her a “bitch” for calling his girlfriend’s phone instead of his cell phone. The claimant maintains his cell phone was operational at that time and he did not call the employer a “bitch” and that she had merely told him he was laid off from the assignment. He asserted he had called in and spoken directly with Ms. Platts on both days of his absence.

**REASONING AND CONCLUSIONS OF LAW:**

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 of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The administrative law judge does not find the employer's testimony to be any more or less credible than that of the claimant. The weight being equal it must be determined the employer has failed to meet its burden of proof by a preponderance of the evidence. No evidence was presented regarding the phone number called by the employer on October 25, 2011, or any record of call-ins for absences on October 24, and 25, 2011, by the claimant. Without more supporting evidence, disqualification may not be imposed.

**DECISION:**

The representative's decision of November 28, 2011, reference 02, is affirmed. Kyle Woodruff is qualified for benefits, provided he is otherwise eligible.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/pjs

