

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARIC LARSON
Claimant

APPEAL NO. 10A-EUCU-00659-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC
Employer

OC: 08-30-09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 21, 2010, reference 04, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 14, 2010. The claimant participated in the hearing. Stacy Navarro, Human Resources Coordinator, and Shane Sorenson, Operations Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general laborer for DES Staffing last assigned to Mid-America Recycling from April 22, 2010 to June 8, 2010, when the client eliminated the second shift. On May 18, 2010, the claimant was bitten by a bug or spider while at work and experienced pain and redness at the bite site, dizziness, and chest pain. He went to the emergency room and, in addition to the symptoms already described, he stated he also had a toothache and was prescribed pain medication for that condition. He told the doctor he had been having chest pains off and on for months but testified the chest pains he was feeling at the time were different and more significant than any of those prior to the bug or spider bite. The claimant reported the emergency room visit as a workers' compensation injury and everything, including the toothache and medication, was charged to the employer's insurance. The employer first became aware of the situation when it received the bill for his pain medication May 19, 2010. It questioned the claimant about the incident and he signed a medical release and reimbursed them for the cost of the prescription. The employer contacted the emergency room and on May 27, 2010, it sent over a record of the claimant's visit where the employer noticed the doctor noted the claimant had experienced chest pains "off and on for months" and indicated he had a toothache before the bite. Consequently, the employer determined the claimant was not eligible for rehire because he filed a false workers' compensation claim. It notified the claimant of its decision June 25, 2010.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proving disqualifying misconduct. 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 went to the emergency room after being bitten by a bug or spider and experiencing pain at the site of the bite as well as unfamiliar chest pain and dizziness. He answered all of the physician's

questions about his health, including telling him he also had a toothache. He was not trying to secure coverage for all of his conditions under the workers' compensation claim but did not know how to split the ailments and felt everything but the toothache was related to the bug or spider bite. The employer is still trying to come to a conclusion with its workers' compensation carrier regarding his chest x-ray. Additionally, the employer was aware of the entire situation by May 27, 2010, yet allowed him to complete his assignment, which ended June 8, 2010, and did not tell him he was ineligible for rehire until June 25, 2010. Under these circumstances, the administrative law judge concludes the claimant did not intentionally falsify his workers' compensation claim and the employer did not terminate his employment in a timely manner. Therefore, benefits must be allowed.

DECISION:

The July 21, 2010, reference 04, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw