

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHNNIE L MCDANIEL**  
Claimant

**APPEAL NO. 12A-UI-10197-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LINDNER PAINTING INC**  
Employer

**OC: 12/18/11  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated August 17, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on September 19, 2012. Claimant participated. Participating with the claimant was Ms. Karen Schunann. The employer although duly notified did not participate.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Johnnie McDaniel was employed by Lindner Painting, Inc. for approximately six years before being separated from employment on July 9, 2012. Mr. McDaniel worked as a full-time sandblaster/painter and was paid by the hour. His immediate supervisor was Al Hartman.

Mr. McDaniel last worked and performed services for the company on July 9, 2012. On that date the claimant became ill at work and was required to be off work for a number of weeks for medical reasons. Subsequently, the claimant was authorized to return to work with a light-duty work limitation. The employer was initially unwilling to allow Mr. McDaniel to return to work with a work limitation. Subsequently, the claimant received a letter from the company saying that the claimant was being terminated from employment. The letter stated that the retroactive date for the claimant's discharge was July 9, 2012.

**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 not.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). 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 Ct. of Appeals 1992).

In this matter the claimant testified he did not quit his job but was not allowed to return to work with a light-duty limitation. After being off work and keeping the employer informed of his status for a number of weeks, Mr. McDaniel received a letter from Lindner Painting, Inc. specifically stating the claimant had been terminated from employment with the retroactive effective date of July 9, 2012. Based upon the employer's letter, Mr. McDaniel reasonably concluded that he had been discharged from employment.

The question before the administrative law judge is not whether an employer can discharge an employee for this reason but whether the discharge is disqualifying under the provisions of the

Employment Security Law. The evidence in the record establishes the claimant was absent due to a verifiable medical condition and kept the employer informed of his status. The employer made a management decision to discharge the claimant. While the employer's decision was undoubtedly a sound decision from a management viewpoint, claimant's discharge did not result from intentional, disqualifying misconduct. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated August 17, 2012, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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