

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH B DULLARD**  
Claimant

**APPEAL NO. 08A-UI-01513-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**E & P AUTOMOTIVE INC**  
Employer

**OC: 01/13/08 R: 02  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

E & P Automotive, Inc. filed an appeal from a representative's decision dated February 7, 2008, reference 01, which held that no disqualification would be imposed regarding Joseph Dullard's separation from employment. After due notice was issued, a hearing was held by telephone on February 27, 2008. Mr. Dullard participated personally. The employer participated by Ned Myers, Owner, and Joseph Shephard, Manager. Exhibit One was admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Dullard 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. Dullard began working for E & P Automotive, Inc. on April 9, 2007 as a full-time technician. On Saturday, January 12, 2008, he called to report that his son was ill and that he was taking him to the doctor. He was asked to come in or call after the appointment and he indicated he would not. The manager advised him that if he did not come in, he should pack up his tools on Monday.

Mr. Dullard went to work and contacted the owner of the business on Monday, January 14, and advised that he had been discharged. A meeting was arranged between Mr. Dullard and the manager. During the meeting, the manager set forth five conditions for Mr. Dullard's continued employment. Mr. Dullard indicated he would not return to the employment unless he was given a raise. When the raise was denied, he left.

**REASONING AND CONCLUSIONS OF LAW:**

The parties disagree as to whether Mr. Dullard's separation was a quit or a discharge. The administrative law judge concludes that the employer initiated the separation when Mr. Dullard was told on Saturday to come in and pack his tools on Monday. The reasonable inference from

such a directive is that the individual no longer has employment. For the above reasons, the separation shall be considered a discharge. It is true that the manager met with Mr. Dullard on January 14 and set forth conditions for continued employment. However, at that point, the discharge had already taken place. Mr. Dullard was under no obligation to continue working for the employer once he was discharged.

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). It appears that the decision to discharge Mr. Dullard was prompted by his failure to report for work on January 12. He properly reported the intent to be absent. He had good reason for being absent, the illness of his child. As such, the absence was excused.

Even if the administrative law judge were to conclude that Mr. Dullard refused to tell the manager whether he would call or come after the doctor's appointment on January 12, disqualifying misconduct still would not be established. At most, his actions would constitute an isolated instance of poor judgment, which is not considered misconduct. After considering all of the evidence, the administrative law judge concludes that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

**DECISION:**

The representative's decision dated February 7, 2008, reference 01, is hereby affirmed. Mr. Dullard 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/kjw