

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WELTON CUMMINGS**  
Claimant

**APPEAL NO: 08A-UI-10535-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GETHMANN CONSTRUCTION INC**  
Employer

**OC: 10/05/08 R: 12**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

Gethmann Construction, Inc. (employer) appealed an unemployment insurance decision dated November 3, 2008, reference 01, which held that Welton Cummings (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 25, 2008. The claimant participated in the hearing. The employer participated through Cornell Gethmann, Stockholder; Deb Osborn, Office Manager; Tony Martinez, Superintendent; and employer representative Cheryl Roethemeier. 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. Employer's Exhibit One was admitted into evidence.

**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 considered all of the evidence in the record, finds that: The claimant was employed as a full-time form carpenter from May 29, 2008 through August 19, 2008. He signed an acknowledgement at the time of hire that he would not be limited to carpentry work or construction work but would be expected to perform any miscellaneous, incidental or similar duties which may be required. On August 19, 2008 the claimant did not want to work with rebar as he had been hired as a carpenter. He had worked with rebar in the past and it was not a problem but was having particular difficulty working with rebar on that date due to a cut on his arm. The claimant testified he never refused to work with the rebar but the employer spoke to Superintendent Tony Martinez about the claimant doing carpentry work. The parties dispute whether Mr. Martinez talked to the claimant personally or whether he went through his foreman to tell the claimant this information. The claimant states that his foreman told him, on behalf of Mr. Martinez, that he could go home if he wanted and needed to report back to work on Thursday. Superintendent Tony Martinez claims he personally told the claimant he could go home and the employer would call him when there was more carpentry work. The claimant returned to work on Thursday as directed and was told he no longer had a job.

## 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 employer contends the claimant voluntarily quit his employment but the facts do not support that contention. Even if relying upon the employer's testimony, Mr. Martinez admitted he told the claimant he could go home and the employer would call him when there was more carpentry work available. The fact that the claimant did as Mr. Martinez suggested in no way

demonstrates he wanted to quit his employment. He was discharged when he returned to work as he believed he was supposed to. If Mr. Martinez needed to confer with his supervisors, he could have told the claimant he would be suspended if he refused to work but said nothing like this. When the administrative law judge asked Mr. Martinez why he told the claimant he could go home, he stated that he was just trying to be nice. The employer has not met its burden. 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 November 3, 2008, reference 01, is affirmed. 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/pjs