

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSHUA A SCHNEIDERMAN**  
Claimant

**APPEAL NO. 11A-UI-12954-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SECONDARY SOLUTIONS LC**  
Employer

**OC: 08/21/11  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated September 20, 2011, reference 02, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 25, 2011. The claimant participated. The employer participated by Jason Evans, owner. The record consists of the testimony of Jason Evans; the testimony of Joshua Schneiderman; and Employer's Exhibits 1 through 4.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is in the advertising business. The claimant was hired in August 2010 as a full-time graphic artist. The claimant's last day of work was August 19, 2011. The claimant was terminated on August 21, 2011.

The claimant had requested a day of vacation for August 19, 2011. He wanted to attend the Iowa State Fair with his family. Some members were coming from out of town. On August 18, 2011, Jason Evans, the owner, asked the claimant if all of his work was done. The claimant said it would be. The project that remained to be done was an ad for one of the employer's clients. The ad was due by 12.00 p.m. at the newspaper. The client, however typically submitted the copy very close to deadline or after.

The claimant contacted a freelance graphic artist to do the ad for him. There was no written rule that prohibited this practice. The free lance artist that the claimant thought could do the ad did not have the right software. The claimant took a laptop with him to the state fair so that he could do the ad. The copy did not come in prior to noon and the claimant was not able to do the ad. He contacted Jason Evans at some point during the afternoon. Mr. Evans did the ad.

The claimant received a phone call on August 19, 2011, from Mr. Evans. The claimant was informed he was being terminated for an email that he had sent to his wife on July 11, 2011, and the incident on August 19, 2011, concerning the ad.

**REASONING AND CONCLUSIONS OF LAW:**

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes an error in judgment or discretion in isolated situations. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to establish misconduct.

The issue in this case is whether the claimant's failure to finish an ad that was due on August 19, 2011, was a current act of misconduct. The claimant had asked for the day off on August 19, 2011, in order to attend the Iowa State Fair with out of town family. The employer had agreed to the day off. On August 18, 2011, Mr. Evans asked the claimant if all the work had been done and the claimant said that it would be.

The claimant knew that an ad had to be done on August 19, 2011, for a regular client. The copy had not yet arrived. The claimant tried to complete the job by first contacting a freelance copy writer and then by having a personal lap top at the fair so that he could do the ad. Both of these plans fell through. As a result, Mr. Evans had to do the ad. The administrative law judge concludes that the claimant exercised very poor judgment by not explaining the situation to Mr. Evans on Thursday or Friday. It is not entirely clear why he was so reluctant to do so other than his perception that Mr. Evans did not like requests for time off. There is no record that the claimant had failed to complete assignments in the past or that he knew that Mr. Evans had a rule against using freelance artists. The greater weight of the evidence is that this was an isolated instance of poor judgment on how to handle a pending assignment as opposed to a deliberate act of misconduct. Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated September 20, 2011, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw