

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON L ADAMS
Claimant

APPEAL NO. 11A-UI-07311-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARAMARK CORP
Employer

OC: 05/01/11
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Jason L. Adams filed a timely appeal from an unemployment insurance decision dated June 1, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held June 28, 2011 with Mr. Adams participating. His former employer, Paramark Corporation, did not respond to the hearing notice by providing the name and telephone number of a witness.

ISSUE:

Was the claimant discharged for disqualifying misconduct?

FINDINGS OF FACT:

Jason L. Adams was a maintenance worker for Paramark Corporation from December 26, 2001 until he was discharged April 15, 2011. The sole incident leading to discharge occurred after hours but on company property. Mr. Adams and his wife lived in an apartment furnished by the company. The apartment complex had an archery court. Mr. Adams was using the archery court when an arrow went astray, striking a driveway, rebounding and breaking an apartment window. Mr. Adams did not do this deliberately.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does not.

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 of proof. See Iowa Code § 96.6-2. As noted above, the employer did not participate in the hearing. The claimant's testimony is the only evidence in the record.

While misconduct is most often found in deliberate actions contrary to an employer's interest, it may also be found in repeated acts of carelessness or negligence. The evidence here persuades the administrative law judge that Mr. Adams was discharged because of a single accident. This is not sufficient to establish disqualifying misconduct. Benefits are allowed.

DECISION:

The unemployment insurance decision dated June 1, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs